



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on October 9, 2017. The Landlord also called the Tenant and the Tenant confirmed receipt of the Materials. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

### Background and Evidence

The tenancy originally started in August 2015. At the outset of the original tenancy the Landlord collected \$375.00 as a security deposit and \$100.00 as a pet deposit. The Parties later signed a fixed term tenancy agreement with a tenancy start date of August 1, 2017 to end July 31, 2018. Rent of \$750.00 was payable on the first day of each month. The original security and pet deposit was carried over to this tenancy. The Tenant gave a month's notice and moved out of the unit on October 31, 2017. The Tenant paid no rent for October 2017.

As soon as the Landlord obtained the Tenant's notice to end tenancy the Landlord advertised the unit for rent at a rental rate of \$800.00. The Landlord obtained a new tenant at this rental rate for the period November 1, 2017 to June 30, 2018. The Landlord retained the unit for her own use thereafter. The Landlord claims \$750.00.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the Landlord's undisputed evidence I find that the Tenant failed to pay rent of **\$750.00** for October 2017. As the Landlord rented the unit thereafter for another 8 months at \$800.00 per month I find that the Landlord was able to reasonably mitigate her loss by **\$400.00** (\$50.00 x 8).

By retaining the unit for herself for the final month of the Tenant's fixed term, July 2018, I find that the Landlord did not have a loss for this month. Deducting the Landlord's gain of **\$400.00** from her loss of **\$750.00** leaves a final loss or entitlement of **\$350.00**. As the Landlord's claim had merit I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$450.00**. The Tenant is ordered to pay this amount to the Landlord.

Section 72(2) of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. Deducting the Landlord's entitlement of **\$450.00** from the Tenant's combined security and pet deposit plus zero interest of **\$475.00** leaves **\$25.00** to be returned to the Tenant.

Conclusion

I Order the Landlord to retain **\$450.00** from the security deposit plus interest of **\$475.00** in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$25.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 03, 2018

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Residential Tenancy Branch