



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MND, MNR-S, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord claims that the tenant was served with the notice of hearing and the submitted documentary evidence via Canada Post Registered Mail on February 15, 2018 and has provided a copy of the Canada Post Receipt and Tracking label as confirmation. The landlord also stated that the package was returned by Canada Post as "Unclaimed" after repeated attempts at service were made. The landlord confirmed that the address used was provided by the tenant and that attempted service was made with an identical package at the address with no success. A copy of the package was left at the door.

The tenant also filed an application for attempted service in which he stated that the tenant was not responding to the attempted service for the notice of hearing package and requested permission to serve via email. The landlord stated that the primary form of communication with the tenant was through this email, but that at the end of tenancy, the tenant refused to acknowledge any communications.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 15, 2018 to the provided tenant's forwarding address. Although the tenant did not claim the package, I find that the tenant has been properly served as per sections 88 and 89 of the Act and are deemed served 5 days later as per section 90 of the Act. The tenant's request for substitute service is deemed unnecessary and dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2017 on a fixed term tenancy ending on March 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 17, 2017. The monthly rent was \$1,500.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$725.00 was paid on April 1, 2017.

During the hearing the landlord amended the monetary claim by cancelling the following portion:

\$3,000.00	Loss of Rent, February-March 2018
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The hearing proceeded with the landlord's amended monetary claim of \$5,465.93 which consists of:

\$1,500.00	Unpaid Rent, December 2017
\$1,500.00	Loss of Rent, Due to Damage Repairs January 2018
\$1,299.70	Damaged Oven Replacement
\$279.68	Damaged Wall Repair/Paint

\$231.00	Cleaning
\$98.55	Damaged Sink Tap Replaced
\$157.50	Labour, Sink Tap Installation/Repair
\$99.50	New Lock/Key for Mailbox
\$300.00	Strata Fine (\$200.00)/Filing Fee (\$100.00)

The landlord claims that the tenant pre-maturely ended the tenancy by giving notice via email in November 2017 to end the tenancy on December 31, 2017. The landlord claims that the tenant failed to pay rent of \$1,500.00 for December 2017 and the tenant vacated the rental premises on December 31, 2017. The landlord stated that a condition inspection for the move-out was scheduled which the tenant failed to attend and that a Notice of Final Opportunity was given to the tenant for January 5, 2018 via email. Upon possession of the rental premises the landlord discovered the rental unit dirty and damaged, requiring cleaning and replacement of a stove (broken oven door and glass insert) and broken sink tap (faucet). The landlord also claims that the tenant failed to return the mailbox key requiring the landlord to replace the lock and get new keys for the mailbox. The landlord claims that during the move-out the tenant failed to pay the strata move-out fee of \$200.00 which was agreed upon at the beginning of the tenancy.

In support of these claims the landlord has provided:

- Copy of emails between the landlord and tenant
- Copy of the signed tenancy agreement dated January 17, 2017
- Copy of signed "Form K" dated December 12, 2016
- Copy of 14 photographs showing the condition of the rental unit at end of tenancy
- Copy of completed condition inspection report for move-in dated March 15, 2016
- Copy of a notice of final opportunity for condition inspection report for move-out
- Copy of invoices/receipts/estimate for repairs/damage

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence to satisfy me that the tenant pre-maturely ended the fixed term tenancy on December 31, 2017 before the end of the fixed term on March 31, 2018. I find based upon the undisputed evidence in the provided undisputed testimony, photographs and invoices/receipts that the landlord has established a claim for unpaid rent, a loss of rental income due to damages/cleaning making the rental premises un-rentable; damaged stove, sink faucet, wall and a missing mailbox key. This required the landlord to suffer a loss of rent for unpaid rent for December 2017, the loss of rental income due to the premises being un-rentable during repairs; replacement of a damaged stove, sink faucet and dirty requiring cleaning.

The landlord has established a total monetary claim of \$5,465.93. I authorize the landlord to retain the \$725.00 security deposit in partial satisfaction of the claim and grant the landlord a monetary order for \$4,740.93 based upon the landlord's monetary worksheet.

### Conclusion

The landlord is granted a monetary order for \$4,740.93.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: September 10, 2018

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Residential Tenancy Branch