



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S, MND-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 and for damage to the unit 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 attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 18, 2019. I accept the undisputed affirmed testimony of the landlord that the landlord served the tenant with the notice of hearing package and the submitted 23 pages of documentary evidence via

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage 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 August 1, 2018 on a fixed term tenancy ending on August 1, 2019 as per the submitted copy of the signed tenancy agreement dated August 8, 2018. The monthly rent was \$1,000.00 and a security deposit of \$1,000.00 was paid.

The landlord seeks a monetary claim of \$4,591.94 which consists of:

\$3,450.00	Unpaid Rent,
\$1,041.94	Repairs for Damage
\$100.00	Filing Fee

The landlord stated that this tenancy ended on November 17, 2019 and that the tenant failed to pay rent totalling, \$3,450.00 which consists of unpaid rent for July 2019 of \$950.00; August 2019 of \$1,000.00; October 2019 of \$1,000.00 and \$500.00 for November 2019 as the tenants vacated on November 17, 2019. The landlord relies upon a submitted copy of a 10 Day Notice dated November 4, 2019 which states in part that the tenant failed to pay rent of \$4,023.59, however, the landlord was unable to clarify why the amounts differed only stating that the 10 Day Notice was not accurate.

The landlord claims that the tenant vacated the rental unit and the landlord discovered that a broken window, a door with a hole in it, 4 damaged blinds and 4 damaged window screens. The landlord stated that a condition inspection report was completed for the move-out in the absence of the tenant with a witness. The landlord called the witness, L.B. who provided undisputed testimony that during the inspection she witnessed, a broken window, a door with a hole in it, 4 damaged blinds and 4 broken window screens.

The landlord provided a copy of an invoice for a glass window replacement for \$73.59; an estimate for rescreening 3 window screens for \$50.40; a photograph of an advertisement for a new door for \$82.99. The landlord also stated that an online search for 4 new blinds had a cost of \$33.74 each for total of \$134.96.

### 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, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that the landlord has provided sufficient evidence to satisfy me that the tenants vacated the rental unit with unpaid rent and with damages as noted by the landlord and her witness. On this basis, the landlord has established a total monetary claim of \$4,491.94.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

As the landlord already holds this amount, I authorize the landlord to retain \$1,000.00 from the security deposit as partial satisfaction of this claim. The landlord is granted a monetary order for the balance of \$3,591.94.

I note during the hearing that the landlord confirmed that she did require and accept a \$1,000.00 security deposit as part of the signed tenancy agreement. The landlord was cautioned that this was contrary to the *Act* as the monthly rent is \$1,000.00. I refer the landlord to section 19 of the *Act* which states in part that the landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent to  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement.

### Conclusion

The landlord is granted a monetary order for \$3,591.94.

This order must be served upon the tenant. Should the tenant fail to comply with this 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: May 15, 2020

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Residential Tenancy Branch