



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC MNSD 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, utilities, damage and loss 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 2:05 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:35 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on March 26, 2020, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both the tenants by registered mail. The landlord provided registered mail stamps and tracking numbers in support of service. The landlord testified the tenants did not provide a forwarding address; therefore, the landlord obtained the tenants current mailing address from a title search.

Based on the above evidence, I am satisfied that the tenants to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

### Issues

Is the landlord entitled to a monetary award for unpaid rent, utilities, damage and loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on April 15, 2019 with a monthly rent of \$1800.00 payable on the 1<sup>st</sup> day of each month. The lease was for a fixed term set to end on March 31, 2020. The tenants broke the lease early and vacated on December 22, 2019. The tenants were responsible for 100% of the hydro and gas and 20% of the city utilities. The tenants paid a security deposit of \$900.00 and a pet deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

### Evidence & Analysis

Based on the uncontested testimony and the documentary evidence provided by the landlord, my findings in relation to the various aspects of the landlords' application as set out on the Monetary Order Worksheet are as follows:

#1: January rent

#3: late fee

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As per section 7 of the *Residential Tenancy Regulation* the landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if provided for in the tenancy agreement.

The landlord's is awarded **\$1800.00** for unpaid rent for January 2020 as claimed and a **\$25.00** late rent fee for this month (claim amount reduced by landlord during hearing). The landlord testified the tenants provided notice on November 26, 2019 of their intention to break the lease effective end of December 2019. The landlord testified they were not able to re-rent the rental unit until February 1, 2020 although they immediately advertised the unit. I find the landlord suffered this loss as the tenants broke the fixed term lease early. I find the landlord took reasonable steps to mitigate this loss. I find the lease provided for a charge of a late fee. The late fees provided for in the tenancy agreement were in excess of the allowable under section 7 of the Regulation; however, in the hearing the landlord agreed to reduce this claim to the allowable amount.

#2: vent cleaning

This claim was withdrawn by the landlord during the hearing.

#4 and #6: paint supplies and paint

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord is awarded of **\$103.84** for paint supplies and **\$125.17** for paint material as claimed. I accept the landlord testimony and picture evidence that the tenants left numerous holes in the drywall which required repair and repainting. The landlord also submitted receipts in support of this expense.

#5, #7 and #8: Fortis Electric, Gas and City utilities

The landlord testified the tenants did not pay the above utilities as required per the lease up until January 31, 2020. The landlord submitted copies of the various utilities bills in support. The landlord is awarded **\$64.45** for electric, **\$120.35** for Fortis gas and **\$138.80** for City utilities as claimed.

#9: Cleaning charge

This claim was withdrawn by the landlord during the hearing.

#10: Title search

The landlord is claiming the cost of the title search to track down the tenants as the tenants failed to provide a forwarding address. The landlord submitted a receipt in support. The landlord is awarded **\$65.88** as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2,543.49**.

The landlord continues to hold a security deposit and pet deposit totalling \$1,350.00. I allow the landlord to retain both the security and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$1,193.49**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,193.49**. Should the tenants fail to comply with this Order, this 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: July 24, 2020

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Residential Tenancy Branch