



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

On August 13, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; and to keep the security deposit and pet damage deposit in full or partial satisfaction of the claims.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not

The Landlord provided affirmed testimony that he served the Tenant with the Notice of Dispute Resolution Proceeding using registered mail sent to the address provided by the Tenant at the end of the tenancy. The Landlord testified that the registered mail was sent on August 20, 2020 and was delivered on August 24, 2020. The Landlord testified that he also sent emails to the Tenant which referenced the hearing and the Tenant replied to the emails.

I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act. The hearing proceeded.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit and pet damage deposit towards the claims?

### Background and Evidence

The Landlord testified that the tenancy began on November 1, 2019 as a one-year fixed term tenancy to continue until October 31, 2020. Rent in the amount of \$1,850.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$925.00 and a pet damage deposit of \$925.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant ended the fixed term tenancy agreement early by moving out of the rental unit by July 31, 2020.

The Landlord is seeking a monetary order for a loss of August 2020 rent, and for cleaning costs. The Landlord has requested to keep the security deposit and pet damage deposit in satisfaction of his claims.

### Loss of August Rent \$1,475.00

The Landlord testified that the Tenant moved out in July 2020 prior to the end of the fixed term tenancy. The Landlord testified that the Tenant did not pay the rent owing for August 2020.

The Landlord testified that on July 17, 2020 he attempted to re-rent the unit by placing advertisements on social media and local websites. The Landlord testified that within two days of posting the advertisements he amended the advertised rent amount to be the same amount the Tenant is responsible to pay under the agreement.

The Landlord testified that he found a new tenant starting September 1, 2020. The Landlord testified that he did not receive any August rent other than a \$300.00 rent subsidy he received.

The Landlord testified that he reached an agreement with the Tenant to reduce the rent owing for August 2020 by \$75.00. The Landlord is seeking a monetary order for the balance of rent owing of \$1,475.00.

### Other Rent Owing

The Landlord testified that the parties agreed upon a repayment plan agreement for the Tenant to repay \$1,700.00 in rent that was not paid in full for May 2020 and June 2020. The Landlord testified that the agreement was for the Tenant to make additional rent payments of \$145.00 starting in August 2020. The Landlord provided a copy of the agreement.

The Landlord's application did not include a monetary claim to recover the amount of \$1,700.00 and the respondent did not receive notice of this claim. The Landlord was given the option to withdraw the \$145.00 claim with leave to reapply for the full amount at a later date, or to proceed with the only the \$145.00 claim amount in his application.

The Landlord chose to proceed with the \$145.00 claim despite being cautioned that he could not split this claim and reapply for the remaining amount later.

#### Cleaning Costs

The Landlord testified that the Tenant left the rental unit unclean when she moved out in July 2020. The Landlord provided 8 photographs of the rental unit showing its condition and state of cleanliness. The Landlord hired a cleaning company who cleaned the rental unit. The Landlord provided a copy of an invoice paid on August 6, 2020 for \$236.25 for the cost of cleaning the rental unit.

The Landlord is seeking to recover the cost of cleaning in the amount of \$236.25

#### Security Deposit

The Landlord applied to keep the \$925.00 security deposit and \$925.00 pet damage deposit in satisfaction of his claims.

#### Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.

3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

#### August 2020 Rent

I find that the Tenant vacated the rental unit prior to the end of the fixed term tenancy and is responsible to pay the rent owing under the tenancy agreement until the Landlord found a new tenant.

I accept the Landlord's evidence that he mitigated against the loss of rent by advertising and attempting to rent the unit at the same monthly rent.

I find that the Tenant owes the Landlord the amount of \$1,475.00 for August 2020 rent.

#### Repayment Plan Agreement.

I find that the parties entered into repayment plan for the Landlord to recover unpaid May 2020 and June 2020 rent. I find that the Tenant did not pay the Landlord the \$145.00 owing for August 2020.

I grant the Landlord the amount of \$145.00 for August 2020 rent owing under a repayment plan.

#### Cleaning Costs

I accept the Landlord's evidence that the Tenant left the rental unit unclean when she vacated in July 2020. I find that the Tenant is responsible to compensate the Landlord for the cost to have the rental unit cleaned.

I award the Landlord the amount of \$236.25 for cleaning costs.

I authorize the Landlord to keep the security deposit of \$925.00 and the pet damage deposit of \$925.00 in partial satisfaction of the monetary awards.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,956.25 comprised of \$1,475.00 in unpaid rent; \$145.00 for a repayment plan payment; \$236.25 for cleaning costs; and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit and pet damage deposit of \$1,850.00 towards the award of \$1,956.25, I find that the Landlord is entitled to a monetary order for the balance of \$106.25. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant ended the fixed term tenancy early and is responsible to pay for a loss of August 2020 rent.

The Landlord has established a monetary claim in the amount of \$1,956.25. I order that the Landlord can keep the security deposit and pet damage deposit in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order for the balance owing of \$106.25.

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: December 04, 2020

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Residential Tenancy Branch