



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD

### Introduction

On October 19, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and damage and to keep a security deposit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary and Procedural Matters

The Landlord provided a copy of their documentary evidence in digital format on a usb drive data stick.

The Tenant testified that she received the data stick from the Landlord but does not have the ability to view digital files.

The Residential Tenancy Branch Rules of Procedure requires that a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The Tenant was asked if they would agree to an adjournment in order for the Landlord to re-serve the documentary evidence. The Tenant was not in agreement to adjourn the hearing. The Tenant stated that she lost a days wages attending this hearing and cannot afford to take another day off.

Since the Landlord did not follow the rules of procedure, the Tenant has not had an opportunity to review, consider or respond to the Landlords evidence. It would be unfair for me to consider evidence that the Tenant has not seen. In addition, the Tenant is present and ready to proceed. It would present prejudice to the Tenant if the hearing was adjourned.

The Landlord's documentary evidence is excluded from consideration. The Landlord testified that the Tenant's documentary evidence was received.

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 a monetary order for damage?
- Can the Landlord keep the security deposit towards their claims?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 7, 2017, on a month to month basis. Rent in the amount of \$900.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$300.00. The parties testified that the tenancy ended on February 17, 2020.

#### Unpaid Rent

The Landlord is seeking a monetary order for unpaid rent. The Landlord testified that the Tenant owes \$600.00 for January 2020 rent and \$546.47 for 17 days of February 2020 rent.

The Landlord testified that only \$300.00 was received for January 2020 rent. In February 2020 the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant did not pay any further amount of rent to the Landlord and moved out of the unit on February 17, 2020.

In reply, the Tenant provided testimony confirming that \$300.00 was paid towards January 2020 rent and did not pay any rent for the month of February 2020.

### Damage

The Landlord testified that the Tenant left a large amount of junk on the rental property that had to be removed and disposed. The Landlord testified that the Tenant left wood, garbage, couch, bed, mirror, and a vacuum.

The Landlord called a junk removal business and paid \$289.80 for the cost to remove and dispose of the Tenant's junk.

The Landlord testified that the Tenant left the rental unit dirty and it took the Landlord hours to clean the unit. The Landlord is seeking \$147.43 for the cost of cleaning products and supplies.

The Landlord stated that the Tenant's proposal to have a move out inspection on February 16, 2020 @ 5:30 pm was accepted. The Landlord testified that the Tenant was not ready at 5:30 pm and the Tenant had left the unit by 6:00 pm and put the keys in the mailbox.

In reply, the Tenant testified that she left a chair and bed in the rental unit that had belonged to her roommate and that some garbage was left behind. The Tenant testified that she cannot see it costing \$300.00 to remove the items.

With respect to cleanliness, the Tenants testified that she left the rental unit clean and washed all the floors. The Tenant provided photographs of the rental unit. She stated that the rental unit was not clean at the start of the tenancy.

With respect to the move out inspection, the Tenant testified that she sent the Landlord a text message, waited for awhile, then left the rental unit.

### Security Deposit

The Landlord applied to keep the \$300.00 security deposit in partial satisfaction of the claim for unpaid rent.

### 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.*

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises provides that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

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

#### Unpaid Rent

I find that the Tenant failed to pay all the rent owing under the tenancy agreement for the month of January 2020 and for 17 days of February 2020.

I award the Landlord the amount of \$1,146.42 in unpaid rent.

### Damage

I find that the Tenant is responsible for abandoning household items and garbage at the end of the tenancy. Since the Landlord is not able to provide sufficient evidence to prove the value of loss, I award the Landlord a nominal damages award of \$100.00.

### Cleaning

The Tenant provided the stronger evidence that the rental unit was left reasonably clean. The Landlord's claim for compensation for performing cleaning and for cleaning supplies is dismissed.

### Security Deposit

I authorize the Landlord to retain the \$300.00 security deposit in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord is mostly successful, 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 \$1,346.42 comprised of \$1,146.42 in unpaid rent; \$100.00 for disposal costs, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$300.00 towards the award of \$1,346.42, I find that the Landlord is entitled to a monetary order in the amount of \$1,046.42. 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 failed to pay all the rent owing under the tenancy agreement for January 2020 and February 2020 and is responsible for the cost to dispose of items left on the property.

I grant the Landlord a monetary order in the amount of \$1,046.42.

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: February 10, 2021

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Residential Tenancy Branch