



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD

### Introduction

On November 24, 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 and or pet damage 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 Tenant testified that she did not serve a copy of her documentary evidence to the Landlord. The Tenant’s evidence was not considered because it would be unfair for me to consider evidence that the Landlord did not receive and did not have an opportunity to respond to.

### 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 and or pet damage deposit towards her claims?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 15, 2020 and was on a month to month basis. Rent in the amount of \$1,695.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$847.50 and a pet damage deposit of \$252.50. The parties testified that the tenancy ended on November 14, 2020.

### Unpaid Rent

The Landlord is seeking a monetary order for unpaid rent. The Landlord testified that the Tenant owes her \$8,170.00 for the following months:

<u>Month</u>	<u>Amount</u>
April 2020	\$1,695.00
May 2020	\$1,695.00
June 2020	\$1,695.00
July 2020	\$1,695.00
August 2020	\$1,695.00
November 2020	\$1,695.00

The Landlord testified that the Tenant made a payment of \$500.00; a payment of \$900.00; and a payment of \$600.00 in April/ May and owes a balance of \$8,170.00.

The Landlord testified that the Tenant was not able to pay the rent owing because her business was not doing well due to the covid pandemic. The Landlord testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in November 2020 and the Tenant moved out of the unit.

In reply, the Tenant provided testimony confirming that the covid pandemic affected her business and income. She testified that during the tenancy the Landlord emailed her saying not worry about paying the rent and that she can pay when she can.

The Tenant testified that she paid the Landlord the following amounts:

<u>Month</u>	<u>Amount</u>
April 13, 2020	\$900.00
May 13, 2020	\$500.00
July 11, 2020	\$600.00
September 6, 2020	\$1,680.00 for September 2020 rent
September 7, 2020	\$15.00 for September 2020 rent
September 15, 2020	\$1,410.00 for arrears owing

October 4, 2020	\$1,695.00 for October 2020 rent
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### Damage

The Landlord is seeking \$1,100.00 for the cost repair damage to laminate flooring located in the dining room, livingroom, and kitchen of the unit.

The Landlord stated that the Tenant left water on the flooring which was absorbed and caused the flooring to swell and pucker.

The Landlord testified that the condition of the flooring was fine at the start of the tenancy. The Landlord testified that there was no move in condition inspection conducted at the start of the tenancy. The Landlord provided photographs of the flooring that were taken at the end of the tenancy.

The Landlord testified that she has not had the flooring replaced and she has not provided a quote on the cost to have the flooring replaced. The Landlord has re-rented the unit to new tenants.

In reply, the Tenant testified that the flooring was already damaged when she moved into the rental unit. The Tenant testified that there was a moisture problem in the unit that was causing mold growth and it likely affected the flooring. The Tenant testified that the Landlord did not perform a move in inspection and complete a condition inspection report.

### Security Deposit

On November 24, 2020 the Landlord applied for dispute resolution and requested to keep the \$847.50 security deposit and \$252.50 pet damage deposit in partial satisfaction of her claims. The Landlord testified that she received the Tenant's forwarding address on November 14, 2020. The Landlord has not returned any amount of the deposits she is holding and testified that there was no written agreement that permitting her to keep an amount of the deposits.

### 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.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

Section 26 of the Act provides 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.

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.*

Section 72 of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit or pet damage deposit due to 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 Tenants testimony that she made three partial rent payments in April, May and July 2020 is consistent with the Landlords testimony on the amount of rent payments received at that time.

I find that the Tenants rent payments made in September 2020 and October 2020 were towards rent owing for those months. The Landlord is not seeking to recover unpaid rent for those two months.

With respect to the Tenant's testimony that she paid \$1,410.00 to the Landlord on September 15, 2020; the Landlord did not respond to this submission. A review of the Landlord's documentary evidence is not helpful as there is no record of a receipt being issued, and there is no banking records or ledger to showing the date and amount of rent payments received. I have also considered that the Tenant has no evidence to support her claim that the rent payment was made. However, the burden of proof rests with the applicant. I find the Tenant's testimony on rent payments to be reliable as the three payments she made in April, May and July is consistent with the Landlord's testimony that those amounts were received.

With respect to a rent payment of \$1,410.00, the Landlord has insufficient evidence to prove this amount of rent is owing.

I find that the Tenant owes the Landlord the amount of \$6,760.00 in unpaid rent for the above-mentioned months.

### Damage

I find that the Landlord failed to conduct a move in inspection and complete a condition inspection report and provide a copy to the Tenant at the start of the tenancy. A properly completed inspection report is considered to be evidence of the state of repair and condition of a rental unit at the start of a tenancy.

I find that the Landlord does not have sufficient evidence to prove the condition of the flooring at the start of the tenancy. The Landlord testified that the floors were fine, and the Tenant replied that the floors were already damaged. The Landlord bears the

burden of proof that the Tenant is responsible for the damage. Photographs showing damaged flooring at the end of a tenancy is not proof of their condition at the start of a tenancy.

In addition, I note that the Landlord did not provide a quote on the cost of having the floors repaired and a new Tenant is now living in the unit.

The Landlord's claim to be compensated for damage to the rental unit flooring is dismissed without leave to reapply.

### Security Deposit

I find that the Landlord applied against the security deposit and pet damage deposit within 15 days of when the tenancy ended.

I find that the Landlord failed to conduct a move in inspection and complete a report and therefore has extinguished her right to apply against the deposits for damage. However, the Landlord is awarded a monetary order for unpaid rent. In accordance with section 72 of the Act, I authorize the Landlord to keep the security deposit and pet damage deposit of \$1,100.00 towards the unpaid rent.

Section 72 of the Act also 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 \$6,860.00 comprised of \$6,760.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit and pet damage deposit of \$1,100.00 towards the award of \$6,860.00, I find that the Landlord is entitled to a monetary order in the amount of \$5,760.00. 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. The Tenant owes the Landlord the amount of \$6,760.00 in unpaid rent.

The Landlord is authorized to keep the security deposit and pet damage deposit amounting to \$1,100.00 in partial satisfaction of the award for unpaid rent.

I grant the Landlord a monetary order for the balance of \$5,760.00.

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: April 7, 2021

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Residential Tenancy Branch