



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S, MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord's agent (agent) attended the hearing; however, the tenant did not attend.

The agent stated they served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on, June 16, 2021. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

I find the tenant was sufficiently served the landlord's application as required by the Act and the hearing proceeded in the tenant's absence.

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11, and the agent confirmed they were not recording the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the submissions are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to retain the tenant's security deposit to partially satisfy a monetary award, and to recover the cost of the filing fee?

### Background and Evidence

This tenancy began on February 15, 2020, for a fixed term through February 28, 2021, monthly rent of \$3,700, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,850 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenant's security deposit, having made this claim against it.

Filed into evidence was a copy of the written tenancy agreement.

The landlord's monetary claim as shown on their monetary order worksheet filed into evidence is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. January 2021 rent	\$3,700.00
2. Revenue loss	\$200.00
3. Damages	\$150.00
4. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$4,150.00</b>

In support of their application, the agent submitted that the tenant was obligated to pay rent through the end of the fixed term, in this case February 28, 2021. Instead, the tenant gave written notice on December 31, 2020, and ended the tenancy in mid-January 2021, by vacating the rental unit, without paying monthly rent that month. The agent submitted they served the tenant with a 10 Day Notice to End Tenancy for Unpaid

Rent or Utilities (Notice). For this reason, the landlord submits they are entitled to unpaid monthly rent for January 2021, in the amount of \$3,700.

Filed in evidence is a copy of the tenant's written notice to end the tenancy and the Notice.

The agent submitted that they were able to find a new tenant for February 1, 2021. However, they were not able to rent the premises for the same monthly rent, despite diligent efforts to do so. The monthly rent for the subsequent tenant was \$3,500, and as the tenant ended the tenancy before the end of the fixed-term, the agent submits they are entitled to the loss of rent revenue for February 2021, in the amount of \$200. Filed in evidence was a copy of the new tenancy agreement, showing the monthly rent of \$3,500.

The agent submitted that they are entitled to \$150 for the cost of patching the walls and touch-up of walls and door frame, junk removal, and replacement of two receptacles. The landlord submitted the invoice, the move-in and move-out condition inspection report (Report), and photos of the rental unit after the tenant vacated, showing damage and personal property left in the rental unit by the tenant.

The tenant did not attend the hearing and no evidence or submissions were provided in response to the landlord's application.

### Analysis

Under section 7(1) of the Act, 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 party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In light of the tenant's failure to appear to provide a rebuttal to the landlord's evidence, despite being duly served, I accept the landlord's undisputed evidence.

As to the unpaid rent, I find the landlord submitted sufficient evidence that the tenant owed, but did not pay, the monthly rent for January 2021, under the terms of the written tenancy agreement and by way of the tenant remaining in the rental unit well into January 2021.

As a result, I find the landlord has established a monetary claim of **\$3,700** for unpaid monthly rent for January 2021.

*Residential Tenancy Policy Guideline #16* notes, “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.” This *Guideline* continues by explaining, “the party who suffered the damage or loss can prove the amount of or value of the damage or loss.”

As to the loss of rent revenue, Residential Tenancy Policy Guideline 3 states that as a general rule, a tenant’s fundamental breach of a tenancy agreement includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy, or February 28, 2021, in this case.

This may include compensating the landlord for the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy.

As the landlord was compelled to reduce the monthly rent in order to secure new tenants, by \$200 per month, I find the landlord is entitled to be put in the same position had the tenant not breached the written tenancy agreement. I therefore find the landlord is entitled to the rent difference of \$200 for the month of February 2021.

As a result, I find the landlord has established a monetary claim of **\$200**.

As to the claim for cleaning and repair, the agent explained that they had incurred loss as a result of the damage to the rental property. The landlord provided photographs showing the damage and the necessity for cleaning and garbage removal, along with a receipt and a move-in and move-out condition inspection report in support of these costs.

I find that the landlord provided sufficient photographic and documentary evidence that the tenant did not leave the rental unit reasonably clean and undamaged, less reasonable wear and tear. I therefore find the tenant did not comply with his obligation under the Act, and that it was necessary for the landlord to incur the costs claimed. I also find the costs claimed to be reasonable, when compared with the state of the rental unit shown in the landlord's photographs.

I therefore find the landlord submitted sufficient evidence to support their claim. As a result, I find the landlord has established a monetary claim of **\$150**.

Due to their successful application, I grant the landlord recovery of their filing fee of **\$100**.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order of **\$2,300** in favour of the landlord as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. January 2021 rent	\$3,700.00
2. Revenue loss	\$200.00
3. Damages	\$150.00
4. Filing fee	\$100.00
5. <i>Less security deposit</i>	<i>(\$1,850.00)</i>
<b>TOTAL</b>	<b>\$2,300.00</b>

The landlord is provided with a Monetary Order (Order) in the above terms and the tenant must be served with this Order as soon as possible to be enforceable. Should the tenant 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 18, 2021

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Residential Tenancy Branch