



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SIMPLE PURSUITS INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 20, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act, and for unpaid rent; and,
- 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.

The Landlord attended the hearing. However, the Tenant did not. The Landlord testified that she sent the Notice of Hearing and all evidence to the Tenant by email on October 6, 2022. A copy of the email was provided into evidence. As per the tenancy agreement, the Tenant agreed to service via email. The Landlord stated she sent the documents to the address as listed on the tenancy agreement.

Since the parties agreed to service via email, in writing, I find this is an acceptable way to serve the above noted documentation. Section 89 of the Act allows the RTB to authorize other methods of service by way of the *Residential Tenancy Regulations*. Section 43 of the *Regulations* specifies that documents may be served by email, provided the email has been given for the purposes of serving and exchanging documentation. Section 44 of the *Regulations* further specify that documents served in this manner are deemed to have been received 3 days after they were sent. Pursuant to the above noted sections of the *Act*, and the *Regulations*, I find the Tenant is deemed served with the above Notice of Dispute Resolution Proceeding and evidence package on October 9, 2022.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 for damage to the unit, for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

### Background and Evidence

The Landlord provided a monetary order worksheet to itemize what she is seeking in this application. The Landlord provided testimony, photos, and receipts for the items. The Landlord still holds a security deposit in the amount of \$650.00. The Landlord also provided a copy of the tenancy agreement into evidence to show the Tenant was under a fixed term tenancy agreement until April 2023. The Tenant moved out suddenly on August 26, 2022, after only living there for a couple of months.

As per the Monetary Order Worksheet, the Landlord is seeking the following items:

- 1) \$210.00 – Cleaning fees
- 2) \$157.50 – Garbage disposal
- 3) \$50.00 – Missing key fob

The Landlord stated that the Tenant moved out suddenly, without any advance notice, sometime at the end of August 2022. The Landlord stated she went by the rental unit on August 26, 2022, and saw that the Tenant had abandoned the unit, and left the unit unclean, with some piles of garbage and furniture behind. The Landlord also noted that the Tenant was given 2 key fobs at the start of the tenancy, and only returned on, which cost \$50.00 to replace. The Landlord provided invoices for the above noted amounts

- 4) \$1,325.00 - August rent plus NSF fee

The Landlord stated that monthly rent was \$1,300.00 and the Tenant paid rent by automatic debit, and the Tenant's payment for August bounced, and incurred the above fee.

5) \$1,300.00 - September 2022 rent

The Landlord stated that it took them a bit of time to clean up the Tenant's garbage and mess, and find new tenants. The landlord was able to find new tenants starting in October 2022. However, given the short notice, the Landlord stated she lost out on rental income for September.

6) \$100.00 and \$100.00 – filing fees

The Landlord is seeking this filing fee paid, as well as the fee paid for a previous application.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenant failed to clean up, and clear out her belongings when she abandoned the unit at the end of August 2022. I also accept that the Tenant failed to return one of the key fobs. I find the Landlord's expenses to remedy the rental unit are reasonable considering the issues left behind. I award the first 3 items, in full.

With respect to item #4, I find the Tenant is liable for this, as she failed to pay August rent, and incurred an NSF fee. I award \$1,325.00. With respect to item #5, I also find the Tenant is liable for this item, as she failed to give any advance written notice that she would be moving out, which is a breach of section 45 of the *Act*. I also note she was under a fixed term agreement, which means she may be liable for lost rent during her term, provided the Landlord sufficiently mitigates their loss. In this case, I find the Landlord sufficiently mitigated and found new Tenants for October, but lost out on rent for September 2022. I accept it would have been difficult to find new tenants as early as September 1, since it was only a matter of days after the Tenant moved out suddenly, and after leaving a mess. I award \$1,300.00 for item 5.

With respect to the filing fees paid, I award \$100.00 which is for the cost of this application. However, I decline to award filing fees for other applications, since I have not heard or decided on the merits of those claims. I also award permission for the Landlord to retain the security deposit, to offset what is owed by the Tenant.

The Landlord is required to pay the Tenant interest on the deposits held, but only starting 2023. This amounts to \$5.94 in interest accrued at 1.95 % rate for part of the year.

In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Total of items listed above	\$3,142.50
Less: Security and pet Deposit currently held by Landlord	(\$655.94)
<b>TOTAL:</b>	<b>\$2,486.56</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$2,486.56**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 7, 2023

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Residential Tenancy Branch