

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

and the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

Landlord C.K.K., Landlord OTH J.F. attended the hearing for the Landlord.

Tenant Y.L., Tenant OTH S.C. attended the hearing for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged receiving the Proceeding Package and are sufficiently served for the purposes of the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

### **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? If not, is the Tenant entitled to a Monetary Order for the return of their security deposit?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for this application from the Tennant?

### **Facts and Analysis**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed the tenancy agreement was for a fixed term beginning January 2, 2025, and ending on December 31, 2025, with a \$1300.00 security deposit and \$2600.00 of monthly rent due on the first day of each month.

Both parties agree that the Tenant vacated the rental unit on June 30, 2025. The Tenant affirms this was due to the disruptive behaviour of the occupants in the unit below the rental unit. The Tenant affirms they never applied for dispute resolution to resolve this matter prior to vacating.

Both parties agree that the Tenant did not provide the Landlord a forwarding address prior to this hearing.

### **Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

The Landlord, in their Notice of Dispute Resolution Proceeding (NODRP), writes the following:

According to Clause 14 of the lease agreement, the tenant shall pay \$3900 for early terminating, the lease prior to its agreed end date. This amount is calculated based on one and a half months of vacancy loss. In addition, there is damage to the cabinet under the sink caused by water exposure. this loss has been reported to the insurance company under claim number 21255389mom and the tenant will be responsible for the deductible amount of \$2500 as well as the inspection fee \$210.

Clause 14 in the tenancy agreement addendums provided by the Tenant reads as follows:

If Tenants break lease before end of date (**June 30, 2025**) outlined in fixed term RTA, they agree to pay the marketing cost associated with the rental company finding a new tenant (**50% of one month rent plus 5% GST**). Tenants are responsible to pay rent during their lease term until it rents out again to a new tenant.

The Landlord affirms that the Tenant altered the date in the addendum 14 and that it is December 31, 2025, in her copy. The Tenant denies altering the date and states they received their copy from the Landlord's agent. Although the Landlord states she provided a copy of the tenancy agreement, I cannot locate it.

Upon review of addendum 14, I find the first sentence of the addendum is date reliant, but the second sentence is not date reliant, and as such, the discrepancy in dates is not relevant to the issue of lost rent income. Therefore, as the Landlord, in their NODRP, does not request the "marketing cost associated with the rental company finding a new tenant (50% of one month rent plus 5% GST)" but rather only one and a half months of rent lost due to vacancy, I find that the discrepancy in dates is not relevant to the issues before me.

Furthermore, notwithstanding my above findings, section 5 of the Act states that landlords and tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no effect. As such I find that Policy Guideline (PG) 3 applies when it clarifies that where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Both parties agree that the Landlord moved into the rental unit after the Tenant vacated. The Landlord states she did so to facilitate finding new occupants, as she resides in Winnipeg.

The Landlord affirms the rental unit has been rented to new occupants and provided a copy of the new fixed term tenancy agreement with an August 16, 2025, start date and an August 31, 2026, end date. Monthly rent is \$2800.00 and due on the first day of each month.

I note that the Landlord's address for service on both the Tenant's tenancy agreement and the tenancy agreement for the Landlord's new occupants is an address in Winnipeg.

I find the Landlord travelling to, and staying in the rental unit, while searching for new occupants to be a logical, and acceptable way to minimise their losses.

Per section 7.1 of the Act and PG 3, I find that the Tenant is liable for the Landlord's loss of rent from July 1 to August 15 of 2025, in the amount of \$3,858.00

The Landlord further requests compensation for water damage to the cabinetry beneath and around the kitchen sink that they discovered after the Tenant vacated. They claim the damage was caused because of a missing silicone seal between the undermount sink and the countertop, which allowed water to seep into the cabinet below. The Landlord asserts that the seal was intact at the start of the tenancy and suggested it either fell out or was removed during the Tenant's occupancy. They emphasized that the Tenant never reported any issue and argued this was not normal wear and tear but damage attributable to the Tenant's actions or neglect.

To support their claim, the Landlord provided an inspection report describing the missing seal along with photographs showing cracking paint and water damage inside the sink base cabinet. The Landlord affirms the repair work has not been completed but provided repair estimates, one for \$7,770 and another for \$7,822, which cover cabinet replacement, countertop removal, plumbing work, and mold prevention.

The Tenant affirms they used the kitchen sink normally and deny any responsibility for the water damage. They affirm they never saw the seal falling out, nor did they remove said seal. They further affirm they never noticed the seal was missing and that they were unaware of any water damage under the sink during the tenancy.

The Landlord provided a copy of the move in Condition Inspection Report, which does not mention any problem with the sink or cabinets. However, although both parties agree that a move out inspection took place on July 3, 2025, the Landlord confirms that a written move-out Condition Inspection Report was not completed and affirms it was because they were simultaneously dealing with a water leakage issue involving an upstairs resident.

Based on the evidence before me and on a balance of probabilities, I find the seal was most likely not present when the Tenant moved in. Furthermore, I find it most probable that it is missing due to the improper installation of the sink. I find the improper installation of the sink to be the reason for the damage, not Tenant misuse of said sink. I further find improper installation of the sink, and the resulting missing seal, to be issues that fall under section 32 of the Act and are part of Landlord's statutory obligation to provide and maintain the rental unit in a state of repair suitable for occupation.

Section 32 of the Act states a tenant is not required to make repairs for reasonable wear and tear. I find the condition of the sink base cabinet to be normal wear and tear for a cabinet with an improperly installed sink. I further find the damage would have developed gradually, at a pace, and in amounts, that would be difficult to detect in its early stages. I find this, and the fact that the missing seal is something a lay person cannot be expected to notice upon casual visual inspection, to be supported by the fact that Landlord missed it herself during the move out inspection and did not notice it until after the Tenant had vacated. As such, I find the Landlord has provided insufficient evidence that the damage resulted because of a failure, by the Tenant, to comply with the Act, regulation or tenancy agreement.

For the above reasons, I decline to award the Landlord compensation for the damage to the kitchen cabinetry.

I find the Landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act in the amount of \$3,858.00.

**Is the Landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? If not, is the Tenant entitled to a Monetary Order for the return of their security deposit?**

As the Tenant did not provide the Landlord a forwarding address prior to this hearing, I find the Landlord applied for dispute resolution in compliance with section 38 of the Act. Therefore, I find the Landlord is entitled to retain the full amount of the security deposit, \$1300.00, plus \$10.12 of interest, for a total amount of **\$1310.12**, in partial satisfaction of their monetary award.

**Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

In the NODRP the Tenant wrote the following:

(1) Full return of my \$1,300 deposit; (2) Rejection of the landlord's unreasonable \$3,900 rent claim—the landlord confirmed the unit was in good condition and agreed to refund the deposit; (3) Compensation for emotional distress and interest due to delayed deposit return; (4) Recognition of bad faith conduct and request the arbitrator to determine a fair amount for emotional damages; (5) Protection for new immigrants unfamiliar with the system.

The Tenant clarified their claim for compensation was primarily for the return of their \$1,300 security deposit, but they also requested recognition of what they describe as bad faith conduct a fair amount for emotional damage.

I find the issue of the security deposit to be settled and now moot. Furthermore, I find the Tenant has provide insufficient evidence of emotional damages and as such I decline to award compensation.

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed without leave to reapply.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

## Conclusion

I grant the Landlord a Monetary Order in the amount of **\$2,647.88** under the following terms:

| <b>Monetary Issue</b>   | <b>Granted Amount</b> |
|---|-----------------------|
| a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act                 | \$3,858.00            |
| authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act | -\$1310.12            |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act  | \$100.00              |
| <b>Total Amount</b>   | <b>\$2,647.88</b>     |

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 Act.

Dated: October 27, 2025

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Residential Tenancy Branch