



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Widsten Property Management Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNSD, MND, MNDC, FF

### **Introduction**

This was an application by the landlord for a monetary order for damage to the rental unit; recover unpaid rent, loss of revenue and recover the filing fee for this application. The application was inclusive of a request to retain the security deposit as set off for the claim.

Both parties participated in the hearing with their submissions, document evidence by the landlord, and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order in the amount claimed?

### **Background and Evidence**

The undisputed relevant testimony in this matter is that the tenancy started February 01, 2012 as a fixed term tenancy agreement with an end date of January 31, 2013. The tenancy ended December 31, 2012 when the tenant ended the tenancy via a Notice to end dated November 26, 2012. The payable under the tenancy agreement was \$695.00 payable on the 1<sup>st</sup>. of each month. At the outset of the tenancy the landlord collected a security deposit of \$347.50 which the landlord retains in trust. At the start and end of the tenancy the parties conducted the requisite condition inspections and the landlord completed the requisite report, of which the hearing has benefit. The parties agree the tenant owes unpaid rent for December 2012, the amount for carpet cleaning of \$134.40, and a quantum for damaged doors. The parties also agree the tenant has paid \$300.00 to the landlord toward any claims.

The landlord is claiming unpaid rent for December 2012, loss of revenue for January 2013, carpet cleaning in the amount of \$134.40, and repairs to 5 doors in the aggregate of \$588.43. The landlord provided invoices for the claimed damages and cleaning. The landlord also provided document evidence in support of their claim for loss of revenue, explaining their measures of mitigating the loss of revenue, and further testified the landlord was waiving the liquidated damages clause of the agreement in the amount of \$400.00.

The tenant testified they disagreed with the landlord's claim for additional damage to doors - to which they had not agreed. The landlord is claiming damage to 5 doors instead of 3 doors as agreed by the parties in the condition inspection report (CIR). The tenant testified that \$425.00 is, in their determination, a fair representation of that they should compensate the landlord. The tenant also disputes the landlord's claim of loss of revenue for January, versus only seeking liquidated damages of \$400.00.

### **Analysis**

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Only in respect to the disputed portions of the landlord's claim, I find that based on the evidence I accept the landlord's claim for loss of revenue for January 2013, and I find

the landlord has provided sufficient evidence to support this portion of their claim and that they mitigated the claim. I find the landlord has not fully met the test for damages in respect to the doors. I accept the landlord's evidence supports the parties mutually identified damage to 3 doors for which the tenants would be responsible. I find the evidentiary weight of the CIR is that the tenants would be responsible for only 3 doors. I find the tenant's assessment that they are responsible for only \$425.00 for damaged doors is a reasonable representation of what the tenant owes the landlord in this regard. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement as follows. The security deposit will be off-set from the award made herein.

### ***Calculation for Monetary Order***

Rental arrears for December 2012	\$695.00
Loss of revenue for January 2013.	695.00
Carpet cleaning	134.40
Damage to 3 doors	425.00
Filing Fee for the cost of this application	50.00
<i>Less Security Deposit</i>	<i>-347.50</i>
<i>Less tenant's credit</i>	<i>-300.00</i>
<b>Total Monetary Award to landlord</b>	<b>\$1351.90</b>

### **Conclusion**

**I Order** that the landlord retain the deposit of \$347.50 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$1351.90**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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 15, 2013

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Residential Tenancy Branch

