



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 29 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on March 27, 2015, by way of registered mail. The landlord provided a copy of a printout of a Canada Post delivery document with a tracking number, showing that the tenant received and signed for the package on March 30, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on April 1, 2015, five days after its registered mailing.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The landlord confirmed that a previous hearing was held before a different Arbitrator on March 19, 2015. The file number for that hearing appears on the front page of this decision. In that hearing, the landlord attended, while the tenant did not. The landlord applied for the same relief in that application as he has in this Application. The Arbitrator found that the landlord did not serve the tenant with his application as per section 89 of the *Act*. Accordingly, she dismissed the landlord's application with leave to reapply. The landlord has now reapplied for the same relief. Accordingly, I find that I have jurisdiction to hear this matter.

The landlord testified that this month-to-month tenancy began on November 1, 2014 and ended around February 18, 2015. Monthly rent in the amount of \$1,050.00 is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord seeks a monetary order of \$2,152.08 total for unpaid rent and damages to the rental unit. The landlord indicated that rent of \$750.00 is unpaid for January 2015, as the tenant only made a payment of \$300.00 on January 16, 2015 towards the total rent of \$1,050.00. The landlord stated that rent of \$1,050.00 is unpaid for February 2015, as the tenant did not make any rent payments for that month. The landlord stated that he is seeking the entire month of rent because although the tenant left around February 18, 2015, he had to enter the rental unit, assess the damage, perform repairs and he was unable to re-rent the unit until March 1, 2015.

The landlord also seeks \$200.00 to replace a stove in the rental unit. The landlord provided a receipt, dated February 21, 2015, for the purchase of a used stove. The landlord provided black and white photographs of the stove which were blurry and difficult to see. The landlord testified that the tenant burned the inside of the oven, that it could not be cleaned and the tenant living upstairs confirmed that the tenant burned lasagna in the oven.

The landlord seeks \$52.08 for fees to dispose of the tenant's items left behind in the rental unit. The landlord provided a receipt for \$111.20, dated February 20, 2015, for the landfill where the items were disposed. The landlord indicated that the tenant was responsible for only 40% of those fees, as he also had to dispose of his own roofing material as well, which he did not charge to the tenant. The landlord also provided another receipt for \$7.60, dated February 21, 2014, stating that the tenant was wholly responsible for those fees for the landfill where the items were disposed. The landlord provided black and white photographs of the items that were left behind. The landlord testified that the tenant left behind beds, frames, a table and other garbage that he had to dispose of before the new tenants moved in.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord initially applied for a monetary order of \$2,102.08 total. The landlord confirmed that he wished to amend his Application to increase the monetary claim by an additional \$50.00 for unpaid rent for January 2015. The landlord did not file an amendment to his Application, prior to this hearing. The tenant did not appear at this hearing. The tenant had no notice of the landlord's intention to increase his monetary claim in order to properly respond to it. Accordingly, I decline to amend the landlord's Application to increase the monetary order by \$50.00. I dismiss the landlord's application to recover \$50.00 in additional rent for January 2015, as the landlord had ample time from filing his application on March 26, 2015 until this hearing on September 2, 2015, to amend his Application and provide the tenant notice but he failed to do so.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$700.00 for January 2015. Therefore, I find that the landlord is entitled to \$700.00 in rental arrears for the above period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant 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 claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show efforts to minimize that loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused a loss of rent for February 2015.

The tenant vacated the rental unit around February 18, 2015. Rent of \$1,050.00 was due on February 1, 2015. Therefore, I find that the landlord is entitled to \$1,050.00 in rental arrears for the entire month of February 2015. I make this finding because the landlord had to examine the rental unit, repair damage, and advertise to re-rent the unit to new tenants.

I find that the landlord is entitled to \$52.08 in disposal fees for having to remove the tenant's items left behind in the rental unit. Residential Tenancy Policy Guideline 1 states that the tenant is responsible for removing garbage at the end of the tenancy. The tenant is also responsible for removing her belongings, including furniture, at the end of the tenancy. The landlord provided photographs that were visible enough to see that the tenant left multiple items behind in the rental unit. The landlord provided receipts for the above fees. I accept the landlord's undisputed testimony that the tenant left items behind in the rental unit and she was only responsible for a 40% portion of the first disposal and the entire second disposal.

I dismiss the landlord's claim for \$200.00 to purchase a used stove and oven, without leave to reapply. Residential Tenancy Policy Guideline 1 states that the tenant is only responsible to clean the stove and oven at the end of the tenancy. The landlord is responsible for repairs to the stove and oven unless the damage was caused by the tenant. I find that the landlord failed to provide sufficient evidence that the tenant burned the inside of the oven and failed to clean the stove and oven appropriately, such that a replacement stove and oven had to be purchased. The landlord's photographs were blurry and I could not see the damage that the landlord claimed.

The landlord continues to hold the tenant's security deposit of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$525.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,327.08 against the tenant as follows:

Item	Amount
Unpaid January 2015 Rent	700.00
Loss of February 2015 Rent	1,050.00
Disposal Fees	52.08
Less Security Deposit	-525.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Award</b>	<b>\$1,327.08</b>

The landlord is provided with a monetary order in the amount of \$1,327.08 in the above terms and the tenant must be served with this Order as soon as possible. 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.

The landlord's claim for January 2015 unpaid rent in the amount of \$50.00 and replacing and stove and oven for \$200.00, are dismissed without leave to reapply.

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: September 03, 2015

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Residential Tenancy Branch

