



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on August 10, 2016 and amended on October 19, 2016. The Landlords filed seeking a Monetary Order for: unpaid rent; damages to the unit, site or property; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords. No one was in attendance at the hearing on behalf of the Tenants. The Landlords provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail August 13, 2016, as per the cash registered receipt. Canada Post tracking receipts stamped August 14, 2016 were submitted in the Landlords' documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Landlords, I find the Tenants were deemed served notice of this application and hearing on August 19, 2016, five days after they were mailed, in accordance with section 90 of the *Act*. Accordingly, I continued the hearing to hear the undisputed evidence of the Landlords, in absence of the Tenants.

### Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

### Background and Evidence

The Landlords submitted evidence that the Tenants entered into a fixed term written tenancy agreement that began on June 15, 2016. The tenancy was not scheduled to end until June 15, 2017. Rent of \$1,600.00 was payable on or before the first of each month. In June 2016 the Tenants paid \$800.00 as the security deposit. A move in condition inspection report was completed in the presence of a Landlords and Tenants on June 12, 2016.

The Landlords submitted evidence that the Tenants failed to pay their July 1, 2016 rent and the Landlords served the Tenants a 10 Day Notice to end the tenancy on July 2, 2016. The Tenants vacated the rental unit prior to the Landlords' arrival at the unit on July 31, 2016. When the Landlords entered the rental unit July 31, 2016, they found a note with the Tenants' forwarding address, as provided into evidence.

The Tenants were served two "Notice of Final Opportunity to Schedule a Condition Inspection"; one on July 31, 2016 and the other on August 4, 2016. The Landlords returned later on August 4, 2016 and completed the move out condition inspection report form in absence of the Tenants.

The Landlords now seek \$3,679.98 for costs incurred to: repair and clean the rental unit plus the \$1,600.00 unpaid July 2016 rent. The Landlord submitted evidence which consisted, in part, of: photographic evidence; the condition inspection report form; and receipts for amounts claimed for cleaning and repairs as follows: \$760.200 for junk and garbage removal; \$500.00 painting; \$150.00 cleaning; \$365.00 repairs to the driveway and sidewalk; \$137.45 to rekey the locks; and \$167.33 for the 2/3 of the hydro bill.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I accept the Landlords' undisputed evidence the Tenants failed to pay their July 1, 2016 rent in accordance with section 26 of the *Act*. Accordingly, I grant the Landlords' claim for unpaid rent in the amount of **\$1,600.00**.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I accept the Landlords' undisputed evidence that the Tenants left the rental unit damaged; requiring cleaning and repairs; and failed to return all of the keys. Therefore, I find the Tenants breached section 37 of the *Act*. In addition, I find the Tenants' breach caused the Landlords to suffer a loss of: \$760.200 for junk and garbage removal; \$500.00 painting; \$150.00 cleaning; \$365.00 repairs to the driveway and sidewalk; \$137.45 to rekey the locks; and \$167.33 for the 2/3 of the hydro bill. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$2,079.98**.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

I find this monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$800.00 security deposit since February 14, 2015.

|                                                          |                                 |
|----------------------------------------------------------|---------------------------------|
| Unpaid July 2016 Rent                                    | \$1,600.00                      |
| Cleaning & repairs                                       | 2,079.98                        |
| Filing Fee                                               | <u>100.00</u>                   |
| <b>SUBTOTAL</b>                                          | <b>\$3,779.98</b>               |
| <b>LESS: Security Deposit \$800.00 + Interest \$0.00</b> | <b><u>-800.00</u></b>           |
| <b>Offset amount due to the Landlords</b>                | <b><u><u>\$2,979.98</u></u></b> |

The Tenants are hereby ordered to pay the Landlords the offset amount of \$2,979.98, forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$2,979.98** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$3,779.98 which was offset against the Tenants' security deposit leaving a balance owed to the Landlords of **\$2,979.98**.

This decision is final, legally binding, and 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: February 09, 2017

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Residential Tenancy Branch