



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented at the hearing by an agent who gave affirmed testimony, and was accompanied by an observer for training purposes. The observer did not testify or take part in the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on August 16, 2016, and has provided a copy of a Registered Domestic Customer Receipt addressed to the tenant and stamped by Canada Post bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The testimony and evidentiary material provided by the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late fees, N.S.F. fees and liquidated damages?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2016 expiring on March 31, 2017 at which time the tenant was required to vacate the rental unit. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 25, 2016 and the tenant moved out of the rental unit shortly thereafter, and before July 12, 2016. A copy of the notice has been provided and it is dated June 15, 2016 and contains an effective date of vacancy of June 25, 2016 for unpaid rent in the amount of \$1,100.00 that was due on June 1, 2016.

Rent in the amount of \$1,100.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided. Liquidated damages are provided for in the tenancy agreement, for which the landlord claims \$550.00.

The tenant provided a forwarding address to the landlord by email on July 26, 2016.

The landlord's agent also testified that on July 1, 2016 the rental unit was advertised for rent for availability of July 1, 2016, for \$50.00 per month more, and was actually re-rented on September 1, 2016. A copy of an advertisement has been provided which is dated July 4, 2016 with an availability of July 30, 2016 for \$1,150.00 per month. The landlord claims the loss of rental revenue for June, July and August totalling \$3,300.00.

A move-in condition inspection report was completed by the parties at the commencement of the tenancy and the tenant signed it. The tenant was not present for the move-out condition inspection report, and the landlord's standard procedure is to schedule such inspections by phoning the tenant. The tenant in this rental unit was called who said that she had moved to another province and would not be able to attend. A copy of the move-in condition inspection report has been provided, which also contains notations at move-out.

The landlord also claims \$136.50 for carpet cleaning, \$125.00 for cleaning the rental unit, and \$177.52 for re-keying and removal of rubbish. Invoices for those claims have been provided. The tenant didn't return the keys to the rental unit.

The landlord has also provided a copy of a tenant ledger, and claims \$150.00 for late fees and N.S.F. fees.

### Analysis

I have reviewed the tenancy agreement which clearly states that the parties agreed to "liquidated damages" in the amount of \$550.00 if the tenant ended the tenancy prior to the end of the fixed term or breached a term of the tenancy agreement prompting the landlord to end the tenancy earlier. I am satisfied that the landlord issued a notice to end the tenancy for the tenant's breach by not paying rent when it was due, and the landlord has established the claim.

With respect to the landlord's claim for loss of rental revenue, I note that the advertisement, and there is only one, expired on July 30, 2016 and it quoted a higher amount of rent payable. In order to be successful, the landlord must be able to establish that the landlord mitigated any potential loss of rental revenue by continuing to advertise the rental unit at a similar rate of rent. The landlord has not established that and I dismiss the landlord's claim for loss of rental revenue.

However, the landlord also testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 25, 2016 and the tenant moved out after that and before July 12, 2016. I have also reviewed the tenant ledger provided by the landlord, and I am satisfied that the landlord has established a claim of \$1,100.00 for each of June and July, 2016 rent.

I have also reviewed the move-in /out condition inspection reports, and I find that the landlord has established the claims of \$136.50 for carpet cleaning, \$125.00 for cleaning the rental unit, and \$177.52 for re-keying and removal of rubbish.

The *Residential Tenancy Act* and regulations permit a landlord to claim the actual cost charged by a financial institution for a dishonoured rent cheque and up to \$25.00 for late payment of rent or returned cheques dishonoured by a financial institution, but not both, and only if contained in the tenancy agreement. I have also reviewed the tenant ledger and the tenancy agreement, which shows \$25.00 for each N.S.F. cheque and \$25.00 for each late payment. There is no evidence before me of the amount the landlord was charged by the financial institution, and I find that the landlord has established \$75.00 for late fees.

In summary, I find that the landlord has established a claim of \$2,200.00 for unpaid rent, \$550.00 for liquidated damages, \$136.50 for carpet cleaning, \$125.00 for cleaning, \$177.52 for rubbish removal and re-keying the rental unit and \$75.00 for late fees. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, for a total of \$3,364.02.

I order the landlord to keep the \$550.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$2,814.02.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$550.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,814.02.

This order is final and binding and may be enforced.

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: February 14, 2017

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Residential Tenancy Branch