



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND MNSD MNDC MNR FF

### **Introduction**

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

- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for unpaid rent, money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agents, ZS and ME, attended the hearing by way of conference call, the tenants did not. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

ZS testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on May 18, 2017 by way of registered mail to the forwarding address provided by the tenants. The landlord provided a Canada Post tracking number in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on May 23, 2017, five days after its registered mailing.

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

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

The landlord's agent, ZS, testified regarding the following facts. This fixed-term tenancy began on August 1, 2015, with monthly rent in the amount of \$2,850.00 payable on the first day of each month. The landlord collected and still holds a security deposit in the amount of \$1,425.00 for this tenancy.

The landlord issued a 10 Day Notice to End Tenancy on February 28, 2017, with an effective date of March 1, 2017, as the tenants failed to pay outstanding rent. The tenants failed to move out by the effective date of the notice, abandoning the unit on March 12, 2017, leaving their belongings behind, and without paying \$5,700.00 in outstanding rent. The landlord's agent testified that the tenants owe \$1,425.00 in outstanding rent each for the months of December 2016 and February 2017, and the entire monthly rent for March 2017.

The landlord applied for monetary compensation as set out in the table below:

<b>Item</b>	<b>Amount</b>
Outstanding rent	\$5,700.00
Outstanding utilities	463.33
Painting	315.00
Cleaning	157.50
Half of Monthly rent due to tenants' failure to comply with section 37(2)(a) of the <i>Act</i>	1,425.00
<b>Total Monetary Order Requested</b>	<b>\$8,060.83</b>

The landlord's agent testified that due the cleaning required after the tenants abandoned the unit, the unit was not re-rented until June 1, 2017 for the same monthly rent, despite efforts to do so as soon as possible. The landlord submitted receipts and invoices, and an accounts receivable summary, in their evidence to support their monetary claim. The landlord also submitted a copy of the move-in and move-out inspection report in their evidence.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for March 2017 by re-renting the unit as soon as possibly, as is required by section 7(2) of the *Act*. I accept the landlords' testimony that they suffered a monetary loss of half a month's rent due the tenants' abandonment of the unit and failure to comply with section 37(2)(a) of the *Act*.

Section 37(2)(a) of the *Act* stipulates 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. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with receipts and invoices. Accordingly, I find the landlord is entitled to compensation as requested in their monetary claim.

The landlord is granted a monetary claim of \$8,060.83 for the unpaid rent and utilities, and the losses incurred due to the tenants' failure to comply with section 37(2)(a) of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I issue a Monetary Order in the amount of **\$6,735.83** in the landlord's favour under the following terms which allows the landlord to retain the security deposit in partial satisfaction of the monetary claim for unpaid rent, utilities, and losses, plus recover the \$100.00 filing fee for this application.

<b>Item</b>	<b>Amount</b>
Outstanding rent	\$5,700.00
Outstanding utilities	463.33
Painting	315.00
Cleaning	157.50

Half of Monthly rent due to tenants' failure to comply with section 37(2)(a) of the <i>Act</i>	1,425.00
Filing Fee	100.00
Less Security Deposit	-1,425.00
<b>Total Monetary Order Requested</b>	<b>\$6,735.83</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenants 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 *Residential Tenancy Act*.

Dated: October 25, 2017

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Residential Tenancy Branch