



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord was not present but was represented by an authorized agent who is hereinafter referred to as “the landlord”. The landlord testified that they served the Application for Dispute Resolution dated July 16, 2018 on the tenant by registered mail and the tenant acknowledged receipt. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages pursuant to section 45(2)(b) for breach of a fixed term lease and other damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

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

Has the landlord proved on a balance of probabilities that the tenant breached the lease and damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing (the landlord by authorized representative) and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence was the last tenancy commenced June 15, 2017 on a fixed term lease to June 15, 2018, that monthly rent was \$2500 and a security deposit of \$1250 was paid. The parties confirmed that the first tenancy agreement dated from 2015. The evidence is that the tenants vacated on December 15, 2017 for financial reasons and they notified the landlord of this possible termination in October 2017 by email. No rent

was paid for November or December 2017. In an email, the tenant said they hoped to pay rent for November and would forfeit their security deposit for December 1-15. They attempted to get a Mutual Agreement to End Tenancy but the landlord did not sign it. On December 12, 2017, the landlord emailed them that they had not deposited rent for November. The landlord said they vacated on December 17, 2018.

The representative for the landlord said he had tried to re-rent the unit without success until March 1, 2018 but she had no direct knowledge of his attempts and no evidence of any advertisements was provided. The tenants said no one had viewed the unit after they gave Notice. Their advocate argued the landlord had the obligation to mitigate his damages and there was no evidence to show he did. The landlord claims as follows:

1. \$8750 for unpaid rent for November and December 2017 and rental loss for January and February 2018.
2. \$560 to replace a sliding door that was broken. His agent was unable to provide the age of the door but the tenant said it might be about 10 years old. Their advocate pointed out that the receipt was dated long after new tenants moved in.
3. \$300 for cleaning. The landlord provided photographs of items that needed cleaning. The tenant said many of the pictures depict mould that was there at the commencement of the tenancy, two showed underneath the stove and refrigerator which were not easily moved for cleaning and they could not identify the last one. They said the pictures do not represent the home as they left it. The tenant supplied videos of their cleaning effort and a receipt to show they had the carpets professionally cleaned.

The evidence is that there was no condition inspection report done at move-in or move-out; none is in evidence. The tenant said they did a walk through at move-out and the landlord did not point out a broken door or that the home was dirty. The landlord lives out of town and the tenants rented the home and got the keys from the former tenants at move-in. They said it had some mould and they pointed it out to the landlord and he said he would fix it but never did.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

#### **Monetary Order**

I find that there are rental arrears in the amount of \$5000 for November and December 2017.

In respect to the claim for rental loss and damages, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Regarding the rental loss, I find this was a fixed term tenancy agreement and the tenant violated it and the *Act* by leaving on December 17, 2017. I find the landlord entitled to rental loss. However I find insufficient evidence that the landlord did whatever was reasonable to minimize the loss. I accept the evidence of the agent that the landlord was trying to preserve the tenancy until December because of the long term relationship with the tenants. Her evidence is supported by the emails sent by the tenant saying they would pay November rent and the landlord's responses. However, I find insufficient evidence of any effort at advertising after December 17, 2018 when the tenants vacated. I take note that at the holiday time of year, it likely would be difficult to rent for January 2018 but considering the housing market, I find insufficient evidence that he did whatever was reasonable to rent for February 2018. Therefore I find the landlord entitled to compensation for rental loss for January 2018 only in the amount of \$2500.

Regarding the damage claim, I find the onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence to support his damage claim. There is no report to show the condition of the premises at move-in or move-out so insufficient evidence that these tenants did the damage. The estimate to repair the door is long after the new tenants moved in and the tenant provided videos and a cleaning receipt showing they cleaned the premises at move-out. I prefer this evidence of the tenants as the videos clearly show a cleaned home whereas the photographs supplied by the landlord largely focus on mould seemingly in the basement that the tenant says pre-existed their tenancy. Furthermore, the age of the door is uncertain and Residential Policy Guideline 37 which is designed to account for reasonable wear and tear assigns a useful life of 15 years to wooden doors. The door may have been at the end of its useful life and, even if the tenant damaged it which is unproven, it may be accounted as reasonable wear and tear and the landlord not entitled to compensation for its replacement.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Arrears of rent Nov. & Dec. 2017	5000.00
Rental loss allowed; Jan.2018	2500.00
Filing fee	100.00
Less security deposit	-1250.00
<b>Total Monetary Order to Landlord</b>	<b>6350.00</b>

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: November 22, 2018

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Residential Tenancy Branch