



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for unpaid rent; damages to the rental unit; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and confirmed receipt of the evidence submitted by the other party. Both parties were provided the opportunity to be heard and to respond to the other party's submissions.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for unpaid rent, damage to the rental unit, or other losses under the Act, and if so, the amount?
2. Retention of the security deposit.
3. Award of the filing fee.

### Background and Evidence

Upon review of the evidence and the testimony of both parties, I make the following findings. The tenant moved in to the rental unit near the end of July 2008 and the parties completed a move-in inspection report. The tenant was required to pay rent of \$850.00 on the 1<sup>st</sup> day of the month plus 40% of gas and electricity bills. The landlord would normally invoice the tenant on the 15<sup>th</sup> of the previous month for utilities due on the 1<sup>st</sup> of the month. The tenant did not pay rent for April 2009.

The landlord testified that when the tenant did not pay rent when due for April 2009 the tenant requested more time to pay which the landlord granted. Then the tenant told the landlord he was going out of town and that the tenant's sister would contact the landlord about the rent on the following Monday. The landlord received a call from a neighbouring tenant who advised the landlord that it appeared as though the tenant was moving out. The landlord claims he attended the property and looked in the windows to find the rental unit mostly vacated. The landlord and tenant spoke on April 8, 2009 and the tenant told the landlord to keep the security deposit and that he was moving out. The landlord changed the locks on or about April 8, 2009 and placed the remainder of the tenant's belongings in the carport. The landlord claims the items remained in the carport until the landlord took the items to the dump approximately a week later. The

landlord testified that it took two trucks load to haul the debris to the dump but that the couch remains in the carport for the current tenants to use.

The landlord is requesting unpaid rent of \$850.00 and \$107.21 for utilities for April 2009. In addition, the landlord is requesting retention of the security deposit as compensation for two days of cleaning and repairs, damaged blinds, damaged linoleum and garbage removal.

The tenant testified that he vacated the rental unit on April 3, 2009 and acknowledged that he did not pay rent for April 2009. The tenant acknowledged telling the landlord to keep the security deposit on April 8, 2009 in lieu of rent and believed he had the first half of April to clean and vacate the rental unit. The tenant objected to paying for utilities for April 2009 since he did not live in the rental unit for most of April 2009. The tenant acknowledged there was some cleaning required and scuffs to the walls from moving but stated the landlord changed the locks so he could not regain entry in the unit. The tenant testified that when his mother returned to the property on April 13, 2009 to retrieve the tenant's possessions they had already been taken to the dump with the exception of the couch. The tenant stated that the linoleum was already damaged when he moved in and he did not point out the minor gouges in the linoleum for the move-in inspection report. The tenant stated the blind in the living room was already damaged as noted on the inspection report and that the other blind was merely bent and could be easily bent back but he could not regain entry in the rental unit to do so.

As evidence for the hearing, the landlord provided photographs of the rental unit and items left in the carport, as well as a copy of the move-in inspection report. A move-out inspection report was not prepared. The landlord did not provide receipts for the dump or the blind the landlord claimed was replaced. The tenant provided photographs of the couch remaining in the carport along with other garbage not belonging to the tenant.

## Analysis

The Act requires a tenant to pay rent when due and to give the landlord proper notice to end the tenancy if the tenant intends to end the tenancy. In this case, I am satisfied the tenant did not give proper notice to end the tenancy and did not pay rent for April 2009; therefore, I award the landlord \$850.00 for unpaid rent. As the landlord did not provide copies of any utility bills or a copy of the invoice showing the tenant's obligation to pay \$107.21 in utilities, I deny this portion of the landlord's claim as unsubstantiated.

Under section 44 of the Act, a tenancy ends on the effective date of a Notice to End Tenancy given by either party so long as the Notice is valid and otherwise complies with

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the requirements of the Act. A tenancy also ends when a tenant vacates or abandons a rental unit. Until such time a tenancy ends, the tenant retains possession of the rental unit and the landlord is not permitted to change the locks to the rental unit. Since neither the tenant nor the landlord had given a Notice to End Tenancy, at issue in this case is whether the tenant abandoned or vacated the rental unit before the landlord changed the locks.

From the landlord's own testimony he stated that when he spoke with the tenant on the telephone and the tenant told the landlord to retain the security deposit, the landlord stated that the tenant told him he was "moving out". I interpret that to mean the tenant was in the process of moving out and had not yet completely moved out. Of further consideration is the fact that the tenant had not yet returned the keys to the rental unit. Therefore, I find the landlord has not satisfied me that the tenant had vacated or abandoned the rental unit when the landlord changed the locks.

While I appreciate the landlord's intention to minimize rental losses and prepare the unit for rent as soon as possible, I find the landlord did not have the right to change the locks on April 8, 2009 and remove the tenant's possessions from the unit. Rather, the landlord had the right to end the tenancy in accordance with the provisions of the Act, by giving a Notice to End Tenancy, seeking an Order of Possession if the tenant did not vacate and then claim for rental losses against the tenant. Changing the locks prohibited the tenant from returning to clean, make any necessary repairs, and remove the remainder of the tenant's possessions.

To succeed with a monetary claim against another party, section 7 of the Act requires the party making a claim to minimize their damage or losses. In light of the above findings, I find the landlord's actions interfered with the tenant's ability to clean, make any necessary repairs to the rental unit and remove possessions from the unit; thus, the landlord did not minimize his damage or loss with respect to the condition of the rental unit at the end of the tenant. Accordingly, I do not award the landlord \$425.00 for cleaning and damages as claimed.

I do authorize the landlord to retain the security deposit and accrued interest in partial satisfaction of the rent owed by the tenant. As the landlord was partially successful with this application, I award the landlord one-half of the filing fee. The Monetary Order provided to the landlord is calculated as follows:

Unpaid rent – April 2009	\$ 850.00
Less: security deposit and interest	(427.66)
Plus: one-half filing fee	<u>25.00</u>
Monetary Order	<u>\$ 447.34</u>



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The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The landlord was partially successful with this application in establishing an entitlement to unpaid rent for April 2009. The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the unpaid rent and is provided a Monetary Order for the balance of \$447.34 to serve upon the tenant.

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: July 28, 2009.

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Dispute Resolution Officer