



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing dealt with cross applications. The landlord was seeking recovery of unpaid rent, retention of the security deposit and recovery of the filing fee. The tenant was seeking monetary compensation for damage or loss under the Act, regulations or tenancy agreement, and return of the security deposit. Both parties were represented at the hearing and confirmed receiving notification of the other party's application against them. 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 unpaid rent for May 2009?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Retention of the security deposit.
4. Award of the filing fee.

### Background and Evidence

Upon consideration of all the verbal testimony and documentary evidence before me, I make the following findings. The tenancy commenced April 3, 2009 and the tenant paid a \$425.00 security deposit at that time. The tenant was required to pay rent of \$850.00 on the 1<sup>st</sup> day of the month. For the month of April 2009 the tenant paid rent of \$650.00 in recognition of the agreement reached between the parties for the tenant to clean the rental unit. On May 5, 2009 the tenant was served with a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) for failure to pay rent for May 2009. The tenant did not pay rent within five days of receiving the Notice and vacated the rental unit on May 17, 2009.

The landlord testified the rental unit was re-rented as of June 3, 2009 and the landlord is seeking recovery of unpaid rent of \$850.00 for the month of May by way retention of the security deposit and a Monetary Order for the balance.



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The tenant testified that the rental unit was in need of numerous repairs and calls to the landlord went unanswered. The tenant claimed that she gave the landlord a handwritten list of deficiencies on May 4, 2009 when the landlord came to collect rent. The tenant stated that she received the landlord's service address when she received the Notice. The tenant is claiming compensation for the following amounts.

Return of April rent paid	\$ 650.00
Natural gas paid at rental unit	112.26
Hydro paid at rental unit	45.04
Moving expenses	175.00
Exceptional food and storage costs	300.00
Stress	<u>500.00</u>
Total	<u>\$ 1,782.30</u>

The landlord claimed that he gave a copy of the tenancy agreement to the tenant Easter weekend and the tenancy agreement contains a service address for the landlord. The tenant disputed the landlord's statement and testified that a copy of the tenancy agreement was not provided to her until May 5, 2009 when she received the 10 Day Notice.

The tenant provided photographs depicting areas of the rental unit in an effort to establish the rental unit did not meet acceptable standards.

## Analysis

As the parties were informed during the hearing, section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Without an Order from a Dispute Resolution Officer or the landlord's consent, the tenant did not have the legal right to withhold rent for the month of May and I find the landlord entitled to rent of \$850.00 for the month of May 2009. As the tenant was informed during the hearing, the parties agreed to rent the unit on a monthly basis; therefore, rent is payable for the entire month regardless of how many days the tenant actually occupied the unit.

A landlord must provide a rental unit that is inhabitable and is maintained in accordance with health, safety and building standard laws. I accept the tenant's position that the rental unit had deficiencies that likely did not meet health, safety and building standard

laws and that the landlord has violated the Act in this regard. However, as the parties were informed at the hearing, any party that makes a claim for compensation against another party who has violated the Act, regulations or tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

In this case, I do not find the tenant acted reasonably to minimize damage or loss she may have incurred as a result of the condition of the rental unit. Rather, I find to minimize losses, a reasonable person would have paid the rent owing upon receiving the 10 Day Notice and made an application for dispute resolution to seek repair orders or compensation if the landlord did not sufficiently respond to a written request for repairs. I did not find sufficient evidence that the rental unit was uninhabitable and even if the rental unit required emergency repairs, the Act provides for such remedies for the tenant. By choosing to move out of the rental unit before exploring the remedies available to the tenant, I find the tenant chose to incur the costs of moving and added stress and the tenant is not entitled to recover such costs from the landlord.

I heard the tenant cleaned and lived in the rental unit in April and was compensated \$200.00 for cleaning required in the unit and I find insufficient grounds to compensate the tenant for the remainder of the rent and utilities she paid for that time. Nor did the tenant establish damages associated with any additional stress or that additional stress was the result of the landlord's actions.

In light of the above findings, I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application. The landlord is provided a Monetary Order in the amount of \$475.00 to serve upon the tenant (\$850.00 + 50.00 – 425.00). To enforce payment, the landlord may file the Monetary Order in Provincial Court (Small Claims) to enforce as an Order of that court.

With respect to the tenant's application, I found the tenant did not minimize her damages or loss by exploring the options available to her before choosing to move out of the rental unit and incur costs to move. Nor did I find sufficient evidence that the rental unit was in such a poor condition as to warrant return of all the rent and utilities paid by the tenant or that the tenant suffered damages from stress as a result of the landlord's actions. Therefore, I dismiss the tenant's application without leave.



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## Conclusion

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord and the landlord is provided a Monetary Order for the balance of \$475.00 to serve upon the tenant. The tenant's application was dismissed in its entirety.

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: September 30, 2009.

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Dispute Resolution Officer