



# 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

This hearing dealt with an Application for Dispute Resolution by the Landlord requesting a monetary order for unpaid rent, for damage to or cleaning of the rental unit, for compensation under the Act and the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim and recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

The Landlord alleges the Tenant smashed a tail light in the Landlord's car and the Crown is proceeding against the Tenant with charges of mischief under \$5,000.00. It was explained to the Landlord during the hearing that the *Residential Tenancy Act* has no jurisdiction in this portion of the case as it is a criminal matter; the Landlord should seek a restitution order from the Crown.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant under the Act?

### Background and Evidence

This tenancy began on November 1, 2011, with the parties agreeing on rent of \$525.00 per month, for a furnished rental unit. The Tenant paid the Landlord a security deposit of \$262.50 at the start of the tenancy. The Tenant vacated the property at the end of February 2012.

The Landlord did not perform incoming or outgoing condition inspection reports.

The Landlord claims the Tenant moved out at the end of February 2012 without providing her the notice to end tenancy as required under the Act or tenancy agreement. The Landlord claims \$525.00 for one month of rent due to improper notice.

The Landlord claims the Tenant damaged the window blinds in the rental unit and requests \$100.00 for the replacement and repair.

The Landlord claims the Tenant removed items from the rental unit at the end of the tenancy which were the property of the Landlord. The Landlord claims the Tenant took a phone and answering machine and claims \$145.00 for this. The Landlord claims the Tenant also removed two lamps (\$70.00), a box spring (\$130.00) and an area rug (\$45.00).

The Landlord also claims the Tenant damaged the refrigerator and it no longer works. The Landlord claims \$277.16 for the replacement.

The Landlord testified she had significant problems with the Tenant not abiding by the alcohol and drug free provisions of the rental agreement.

The Landlord explained that the Tenant had come to the Landlord's residence when he was intoxicated and pounded on it with a brick, causing dents in her door.

In support of the Landlord's claims, she provided evidence in the form of a refrigerator advertisement from a hardware store was, as well as an auto body repair estimate, information from Crown counsel, the forwarding address provided by the Tenant, and the Tenancy Agreement. There were also photographs of the rental unit taken while the Tenant still had his property in the rental unit.

In reply, the Tenant claims he gave the Landlord notice he was vacating the rental unit by putting a letter in her mailbox on January 29, 2012. The Tenant testified he had a witness when he put the letter in the mailbox, but is unable to find that witness. The

Tenant alleges he informed the Landlord in this letter that he was leaving due to the poor condition of the rear stairs at the rental unit. He testified he did not date the letter, but did date the envelope.

The Tenant testified he used a brick to knock on the Landlord's door because she never answered her door. He alleges he only made four small marks with the brick.

The Tenant alleges that the blinds were damaged when he moved into the rental unit.

The Tenant testified that the answering machine and phone did not work when he moved into the rental unit, so he left them on a table in the common area of the rental unit for the Landlord. The Tenant testified that is where he was told to put things that did not work.

The Tenant denies he took any lamps or a rug from the rental unit.

The Tenant testified he put the box spring up against the wall at the back of the rental unit. He alleges it was unsanitary.

The Tenant denies the fridge was damaged or did not work. He testified that while it did not work well, he defrosted it and left it clean when he moved out.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant failed to provide the Landlord with the required Notice to End Tenancy, in accordance with the Act. The Tenant had no evidence, such as a copy of the notice, or evidence from his witness, that he gave the Landlord written notice to end tenancy.

Furthermore, even if the Tenant did serve the Landlord with such a notice, by putting it in the Landlord's mailbox on January 29, 2012, it is not deemed served until three days later under section 90 of the Act. This means that if the Tenant did give written notice it was deemed served on February 1, 2012, which is one day too late to end the tenancy in February. Therefore, I find the Landlord is entitled to one month of rent in the amount of \$525.00 from the Tenant.

The party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this instance, the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Here the Landlord did not have an incoming condition inspection report to verify the condition of the rental unit, such as the blinds, at the outset of the tenancy. The Landlord should also be aware that failure to perform an incoming or outgoing condition inspection report extinguishes her right to claim against the deposit for damages under the *Act*.

In addition to the condition inspection reports, it is also common for landlords who rent furnished properties to have a checklist of the items being supplied with the furnished rental unit in order that both parties have a record of what was provided at the outset of the tenancy. Here the Landlord had no such list or record.

In response to the Landlord's claims he took some items, the Tenant testified that he did not remove the lamps or the rug from the rental unit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find the Landlord did not have sufficient evidence that the Tenant took the rug or lamps from the rental unit and I dismiss these claims without leave.

While the Tenant did testify that he moved around a box spring, answering machine and phone at the rental unit, the Landlord did not provide sufficient evidence that these were removed entirely. I also find the Landlord failed to provide verification of the value of these items in order to prove her claim, such as receipts or invoices. Therefore, I dismiss these claims without leave.

I also dismiss the Landlord's claim regarding the refrigerator, without leave to reapply. I find the Landlord did not have sufficient evidence that the Tenant damaged it or caused it to stop working. Just because an appliance has stopped working does not mean the Tenant damaged it. Appliances do not last forever and do break down.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant breached the Act by failing to provide proper notice to end the tenancy to the Landlord. I find that the Landlord has established a total monetary claim of **\$575.00** comprised of one month of rent and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$262.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$312.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2012.

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Residential Tenancy Branch