



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRIME PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 15, 2013, Canada post tracking numbers were provided as evidence of service. The agent stated that the Canada post track history indicates that the packages were received by the tenants on October 16, 2013. I find that the tenants have been duly served in accordance with the Act.

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

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on April 1, 2012. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenants. The tenancy ended on October 5, 2013.

The landlord claims as follows:

a.	Unpaid rent for October 2013	\$1,200.00
b.	Loss of rent for November 2013	\$1,200.00
c.	Cleaning cost	\$ 300.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$2,750.00</b>

The landlord's agent testified that on October 1, 2013, the tenants were residing in the rental unit and their rent cheque was deposited into their bank account. The agent stated the cheque was returned as the tenants had placed a stop payment. The landlord seeks to recover unpaid rent for October 2013 in the amount of \$1,200.00.

The landlord's agent testified that on October 2, 2013, he noticed that the tenants were moving their belongings from the rental unit. The agent stated that the tenants did not provide any prior notice that they were ending the tenancy and he went to talk to them about this. The agent stated at that time the tenants provided him written notice to end the tenancy, however, the notice was dated August 29, 2013, in an attempt to look like proper notice was given.

The landlord's agent testified that they had a current advertisement posted for their building as they had six other unoccupied rental units that they were attempting to rent. The agent stated as a result of this, they were unable to find new tenants for the month of November and seeks to recover loss of revenue, as the earliest date the tenants could have ended the tenancy was November 29, 2013. The landlord seeks to recover loss of revenue in the amount of \$1,200.00.

The landlord's agent testified at the move-out condition inspection the tenants had left a large amount of garbage and did not clean the unit. The landlord's agent stated that the tenants agreed to the cost of cleaning in the amount of \$300.00. Filed in evidence is a copy of the move-out condition inspection report.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

*26 (1) 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.*

The evidence of the landlord's agent was that the tenants were residing in the rental unit when rent was due on the first of the month and failed to pay rent. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to unpaid rent for October 2013, in the amount of **\$1,200.00**.

Section 45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the **landlord receives** the notice, and*  
*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, the evidence of the landlord's agent was that they received from the tenants notice to end the tenancy on October 2, 2013 and vacated the rental unit on October 5, 2013. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy after the notice was received. Placing an earlier date on a letter is not sufficient evidence to support when the letter

was received by the landlord. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was November 29, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for November 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was that the rental complex had six other unoccupied units at the time the tenants vacated the premises and they had an existing advertisement currently posted. The evidence of the agent was that they were unable to find a new tenant for the month of November for this rental unit. As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for November 2013 in the amount of **\$1,200.00.**

Section 37 of the Residential Tenancy Act states:

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In this case, the evidence was landlord's agent was that the tenants did not clean the rental unit and agreed to the cleaning cost of \$300.00. The move-out condition inspection report supports the landlords claim. As a result, I find the tenants have breached section 37 of the Act, when they failed to clean the unit and this caused losses to the landlord. Therefore, I find the landlord is entitled to compensation for cleaning costs the amount of **\$300.00.**

I find that the landlord has established a total monetary claim of **\$2,750.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,150.00.**

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

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 13, 2014

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Residential Tenancy Branch