



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD

### Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of the deposit and a monetary order for compensation for a loss or money owed under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on December 1, 2013 and ended on December 24, 2014. The tenants were obligated to pay \$700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$350.00 security deposit. The landlord stated that the tenant did not provide written notice that he was moving out. The landlord stated the tenant gave verbal notice on December 2, 2014 that he would move out by December 15, 2014 and to apply the security deposit to cover the rent. The landlord stated the tenant did not vacate until December 24, 2014. The

landlord stated he is seeking to retain the security deposit as “fair compensation” for the unpaid rent.

The landlord stated the tenant left the unit dirty and that he incurred cleaning costs of \$75.00 to rectify that. The landlord stated the tenant took his gas trimmer that was worth \$200.00. The landlord stated that he is seeking \$51.00 for a parking fee as the tenant left his motorcycle on the property until January 9, 2015. The landlord stated that he disputes that any arrangement was made for the loss of frozen food items in the outdoor freezer. The landlord stated that he should not be responsible for the loss of food as he is unaware of whether the freezer was functioning properly. The landlord filed an application on January 25, 2015.

The tenant gave the following testimony. The tenant stated that he gave the landlord verbal notice on December 2, 2014 that he would be out by December 15, 2014. The tenant stated that he was out on that day. The tenant stated that he gave the unit “back as clean as I got it”. The tenant adamantly denies that he took the gas trimmer. The tenant stated that the landlord agreed to let him park his motorcycle on the property and at no point mentioned a fee. The tenant stated that the landlord turned off the power to his freezer that he kept outside and lost \$120.00 worth of turkey and \$245.00 worth of salmon. The tenant stated the landlord agreed to cover those losses. The tenant stated that he paid rent one month in advance at all times and that the landlord is “way ahead in that department and I want my deposit back”. The tenant provided the landlord his forwarding address in writing on January 15, 2015.

### Analysis

Firstly, I will deal with the landlords’ claims and my findings as follows. The landlord is seeking \$350.00 for unpaid rent as the tenant did not give proper notice. Section 45 of the Act addresses this issue as follows:

### **Tenant's notice**

**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.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

In the tenants own testimony he acknowledged that he gave verbal notice on December 2, 2015 for a move out of December 15, 2014. The tenant failed to give sufficient notice or provide that notice in writing as required. Based on the above and on the testimony of both parties I find that the landlord is entitled to \$350.00 for unpaid rent.

The landlord is seeking \$75.00 for cleaning, \$200.00 for a gas trimmer, and \$51.00 for parking fees for the tenants' motorcycle. The landlord did not conduct a condition inspection report upon move in or move out. In addition, the landlord did not provide any pictures or receipts to support the condition of the unit or cleaning costs. Further, the landlord did not provide any evidence that the tenant took the gas trimmer, just an allegation. And finally, the landlord was unclear as to the arrangement about the motorcycle and the amount of fee per day and for how many days. Based on all of the above deficiencies, the landlord has not provided sufficient evidence to prove their claim and I therefore dismiss this portion of their application.

As the landlord has been partially successful in their application they are entitled to the recovery of their \$50.00 filing fee. The landlords' total award is \$400.00.

I now address the tenants' claims and my findings as follows. The tenant is seeking \$365.00 for food that was spoiled that he alleges was a result of the landlord turning off the power to the freezer. The tenant did not provide any evidence of the landlord turning off the power or the actual costs to replace the items sought. Based on the insufficient evidence before me I dismiss this portion of the tenants' application.

I address the tenants claim to the security deposit as follows; the landlord has established a claim for \$400.00. I order that the landlord retain the \$350.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not been successful in his application.

### Conclusion

The landlord is entitled to a monetary order of \$50.00. The tenants application is 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: August 06, 2015

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Residential Tenancy Branch

