



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenant requesting a monetary order against the Landlord for alleged losses incurred, under the *Residential Tenancy Act* (the “Act”).

Both parties appeared at the hearing. The Landlord was represented by an Agent. 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.

### Issue(s) to be Decided

Did the Landlord breach the Act?

What amount of compensation is the Tenant entitled to if the Landlord breached the Act?

### Background and Evidence

The Tenant contacted the Landlord on February 3, 2015, to view a rental unit the Landlord had for rent. On February 4, the Tenant viewed the rental unit with the Landlord’s Agent, who resides at the property.

The Tenant informed the Agent that he was having difficulties with the landlord at the rental unit he occupied at that time. The Agent explained the “house rules” to the Tenant. The Agent suggested to the Tenant he talk to the Residential Tenancy Branch about the issues he was having with his current rental situation.

Within a few days the Tenant called the Agent and said he spoke to someone at the Branch and would not be moving at that time. The Agent submitted she did not expect to hear from the Tenant again.

On March 2, 2015, the Tenant returned to the subject rental unit and met with the Agent for the Landlord. The Agent submitted that the Tenant informed her he had lost their phone number and that is why he just "showed up", at approximately 9:30 pm in the evening. The Agent testified the Tenant had arrived in a rental car. The Agent testified that the Tenant had told her he was illegally evicted from his previous rental unit.

The Tenant asked if the rental unit was still available and the Agent informed him it was.

The Tenant paid the Agent a \$200.00 security deposit and \$200.00 towards the monthly rent of \$480.00. The Tenant informed the Agent that he would pay the balance of \$280.00 the following day. The Agent testified that the Tenant was vague about when he would be arriving the next day to start moving in.

The next day the Tenant arrived later in the evening and the Tenant asked and was allowed to move a few things into the rental unit. There was conflicting testimony about whether or not the Tenant had offered to pay the balance due of \$280.00 at that time. The Tenant testified he showed the balance to the Agent and the Agent testified he asked to pay the balance due on the following day, March 4, 2015. Regardless it was not paid.

The Tenant began moving items into the rental unit late in the evening of March 3, 2015.

The Agent testified that she began to have second thoughts about renting to the Tenant that evening. She testified there were a few things that caused her concern about the Tenant's behaviour and she was reluctant to live with him due to unknowns about him and the previous tenancy he was leaving. She testified that he had come later in the evening on March 2, and she had been caught off guard which is why she allowed him to pay a deposit and partial rent for the month. The Agent talked it over with the Landlord and they decided that they did not want to rent to the Tenant.

The next day, March 4, 2015, the Tenant arrived and was informed by the Agent that they would not be renting to the Tenant. The Agent informed the Tenant that the room required renovations and they did not want to rent to him. The Agent reimbursed the Tenant the \$200.00 security deposit and \$200.00 payment on rent. In evidence from the Landlord are receipts for payment of the deposit and the partial rent payment, dated March 2, 2015. The Tenant signed for the return of the \$400.00 on a receipt dated March 4, 2015.

The Agent submitted that the tenancy had not been completed as the Tenant had still not paid all the rent for the month. The Agent argued that it was a conditional tenancy, requiring the Tenant to pay all the rent before it was finalized.

The Tenant argued that when he arrived at the rental unit the next day he tried to pay the Agent the balance of rent due, but it was refused. He testified the Agent told him they wanted to complete renovations to the room so he could not move in. According to the testimony of the Tenant he informed the Agent he would be willing to put up with some renovations.

The Agent for the Landlord allowed the Tenant to store some of his items in the rental unit for a period of time after they decided not to rent to the Tenant.

The Tenant now claims for the cost of the rental car he used to move to the rental unit and for two nights in a hotel. The Tenant provided an invoice for the rental car showing he had rented it at noon on March 2, 2015, and returned it at approximately noon on March 4, 2015. The Tenant claims **\$51.85** for the rental car for this period of time.

The Tenant claims he had to spend two nights in a hotel due to the refusal of the Landlord to allow him use of the rental unit rent. The Tenant provided hotel invoices in the amount of \$86.25 a night for the nights of March 4 and March 5, and claims **\$172.50** for the two nights.

### Analysis

A 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.

Awards for compensation are provided in sections 7 and 67 of the Act. 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 Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant took reasonable steps to minimize the damage or losses that were incurred.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

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

I find the Landlord has breached the Act by failing to end the tenancy in accordance with the Act. Under section 44 of the Act a tenancy may only end by using one of the methods prescribed to end a tenancy. Here the Landlord failed to end the tenancy in accordance with the Act.

I do not accept the argument of the Landlord that the tenancy was conditional upon the Tenant paying the balance of rent due in the amount of \$280.00. There was nothing in writing to this effect and the Tenant was not informed of this when he paid the security deposit and partial rent payment. In fact he was allowed to begin moving into the rental unit. I find the tenancy agreement was oral and the dealings with the Agent, the acceptance of the partial payment of rent and the acceptance of payment of the security deposit were sufficient to imply to the Tenant that a tenancy agreement had been formed. I find that an oral tenancy agreement existed here and therefore, the Landlord was required to end it by giving the Tenant the required notice under the Act.

I allow the Tenant the two nights that he had to pay to stay in a hotel. I find that the Landlord did not allow the Tenant to take possession of the rental unit despite a tenancy being formed. I find that due to the breach of the Act, the Tenant had to spend two nights in the hotel prior to finding another rental unit. I further find the Tenant mitigated this loss by finding a reasonably priced hotel. Therefore, pursuant to sections 7 and 67 of the Act, I allow the Tenant **\$172.50** for the cost of the hotel.

However, I do not allow the claim of the Tenant for the rental car. The evidence indicates he appeared at the rental unit in the rental car without calling as he did not have the phone number; therefore, he had rented the car prior to even knowing if he could move into the subject rental unit. Furthermore, the Tenant would have had to rent a vehicle in any event in order to move his property from his prior rental unit. Therefore, I find the Tenant has failed to show that the cost of the rental car was due to the Landlord breaching the Act and I dismiss this claim without leave to reapply.

I grant the Tenant a monetary order for **\$172.50** which must be served on the Landlord, and may be enforced in the Provincial Court, Small Claims Division.

Conclusion

The Tenant has shown the Landlord breached the Act and that some of his losses, but not all, were due to the Landlord's breach. I dismiss the claim for the rental car without leave to reapply. I allow the claim for the hotel room for two nights in the amount of **\$172.50**, and grant the Tenant a monetary order for this amount.

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 Act.

Dated: November 03, 2015

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Residential Tenancy Branch

