



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NCN D'AMATO  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR RR MNDC MNSD FF

### **Introduction:**

Both parties made applications and were present at the hearing. They acknowledged personal service of their Applications and the Notice to End Tenancy dated October 2, 2015. The landlord's application pursuant to the *Residential Tenancy Act* (the Act) was for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant's application was for orders as follows:

- e) To repair the property and control pests;
- f) A monetary order or rent rebate as compensation for lack of pest control and repair to the property;
- g) To obtain a refund of his security deposit; and
- h) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

The tenant has vacated so an Order of Possession is no longer required. Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to a monetary order for rental arrears or loss and to retain the security deposit and recover the filing fee for this application?

Has the tenant proved on the balance of probabilities that they are entitled to compensation for neglect of the landlord to control rodents and to the refund of their security deposit and to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in

February 1, 2015, that rent is \$1075 a month and a security deposit of \$537 was paid. It is undisputed that the tenant has not paid rent for October and he vacated in response to the Notice to End Tenancy which was to be effective on October 12, 2015. The landlord claims one half of one month's rent for October 2015 (\$537) plus his filing fee.

The tenant said they had to move out because they were threatened by the landlord and another male who said their belongings would be thrown out if they did not move. He requests the refund of his security deposit and \$300 for moving costs and not to be found liable for any rent for October. He said he did nothing wrong but was forced to move because of a mouse infestation and threats from the landlord. However, he said even if there were no threats, he was forced to move because he had to follow the Notice to End Tenancy for unpaid rent which required him to move by October 12, 2015. He said he paid \$150 for traps and he was not reimbursed as promised. He said he did not provide a receipt in evidence for he slid it under the landlord's door as requested. The landlord denied receiving any receipt and the tenant had said the cost was \$100. He requests the refund of his security deposit plus \$300 and said he thought the landlord should have given him free rent for October because of the mouse problem. The parties agreed that the tenant sent his forwarding address on November 24, 2015. The tenant submitted evidence of a letter he sent outlining the problem dated September 29, 2015 which he said was sent after he obtained advice from the Residential Tenancy Branch.

The landlord said the complaints regarding mice came from the tenant after there was a problem with his September rent cheque. At first the tenant apologized, then made accusations about mice and the landlord not caring about the building. The landlord said he called an exterminator on October 5, 2015 and he said there was no evidence of a mouse infestation but he put traps in four suites. He included a receipt for a pest control company in evidence.

In evidence is the Notice to End Tenancy for unpaid rent, copies of an NSF cheque, statements of the parties, a photo package, the tenancy agreement, a letter from the tenant dated September 29, 2015 to the landlord concerning the problem and many emails between the parties.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

As explained to the parties, the onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord satisfied the onus of proving that rent was owed for October 2015 as the tenant agreed he had not paid any rent for October. Although the landlord claimed more in his Application, he limited his claim to one half of one month's rent in the hearing as the tenant vacated before October 15, 2015. I find the landlord entitled to \$537 as claimed and to recover his filing fee for this application.

On the tenant's application, the onus is on him to prove on the balance of probabilities that he is entitled to free rent for October, the refund of his security deposit and moving costs. 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.

I find insufficient evidence that the landlord violated the *Act* or tenancy agreement by act or neglect. I find the landlord's statement that he was first notified of the mouse problem in late September 2015 is supported by the emails and letter from the tenant in evidence. Although the landlord did not agree there was a mouse infestation, I find he acted promptly and engaged a pest control company to address any problem; the receipt in evidence is dated October 5, 2015 and supports the landlord's diligence. Therefore, I find insufficient evidence that the tenant is entitled to a rebate of rent for October 2015. I dismiss this portion of his claim.

Likewise, I find insufficient evidence to support the tenant's statement that the landlord forced him to move by threats. He said in the hearing "even if there were no threats", the Notice to End Tenancy forced him to move. I find the Notice to End Tenancy clearly sets out the tenant's options to either pay the rent or make an Application to cancel the Notice. I find the tenant chose not to exercise his legal options but rather to not pay the rent and move. I dismiss the claim of the tenant for moving costs as I find he did not incur these through any act or neglect of the landlord but due to his choice to move rather than pay the rent or bring an Application to dispute the Notice.

In respect to the refund of his security deposit, I find section 38 of the *Act* provides the landlord has 15 days from the later of the tenant vacating and providing his forwarding

address in writing to refund the deposit or file an Application to claim against it. I find the landlord applied on October 8, 2015 and is requesting the security deposit be used to offset the amounts owed for rent. Pursuant to my jurisdiction under section 38(4) (b), I find the landlord may retain the security deposit to offset the rent owed. I dismiss the application of the tenant for the return of his security deposit.

**Conclusion:**

I find the landlord entitled to a monetary order as calculated below and to recover his filing fees for this application.

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application due to his lack of success.

**Calculation of Monetary Award:**

Rent as claimed Oct. 1-15	537.00
Filing fee	50.00
Less security deposit (no interest 2015)	-537.00
Total Monetary Order to Landlord	50.00

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: December 02, 2015

---

Residential Tenancy Branch

