



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant's Application – MNDCT, MNSD, FFT  
Landlord's Application – MNDCL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the "Application") brought by the Tenant requesting a monetary order for the return of rent and lost wages, as well as the return of his security deposit and pet damage deposit, for a total claim of \$4,200.00.

The Landlord filed a counter-claim for \$4,000.00, requesting a monetary order for damages and cleaning charges and to retain the security deposit. Both parties also request an order for payment of their \$100.00 filing fee.

The parties agree that the correct rental unit address was #103 and not #102 as indicated on one of the Applications; this decision reflects that amendment.

The Landlord and Tenant both appeared for the scheduled hearing. Neither party raised a concern about the service of the Notices of Hearing or evidence that was submitted by the parties, all of which was served by registered mail.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The Landlord submitted individual pages of what she purports to be the tenancy agreement, however, page 3 was submitted twice and page 2 was missing; the Landlord was given additional time to upload the missing page 2 for my consideration. The additional page was uploaded and considered in this decision.

### Issues to be Decided

Is the Tenant entitled to a monetary order for the return of rent and lost wages, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to a monetary order for cleaning and other damages, pursuant to section 67 of the Act?

Is the Landlord or Tenant entitled to the security deposit, pursuant to section 38 of the Act?

Is either party entitled to payment of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

This tenancy began January 1, 2017 and ended February 1, 2018 after the Landlord served a One Month Notice to End Tenancy for Cause, a copy of which was submitted into evidence. The Tenant states that he did not understand his rights and did not dispute the Notice within the required 10 days, instead seeking new accommodations and vacating the rental unit by the effective date of the Notice. Both parties agreed that the Tenant provided his forwarding address in writing when he filed his dispute application on March 16, 2018; the Landlord received this information on March 26, 2018 and acknowledged this to be written notification of the Tenant’s forwarding address.

Monthly rent was \$1,350.00 payable on the 1<sup>st</sup> of each month; a \$700.00 security deposit was paid. The Tenant states that he also paid a \$650.00 pet damage deposit because the Landlord was aware that he had a dog; the Landlord denies requesting or receiving any pet damage deposit.

A copy of a signed tenancy agreement was submitted into evidence; it stated that it was for a fixed term of one year ending December 31, 2017 and to revert to a month-to-month thereafter. It indicates that there was \$700.00 security deposit but makes no

mention of a pet damage deposit. However, the Tenant states there was no written tenancy agreement, and that he only agreed verbally to rent the rental unit; he argued that there was evidence of "white-out" in spots on the document submitted and that he did not sign under the tenant's name, in a place designated for a landlord's signature. The Landlord denies forging any signature and states that this is the actual tenancy agreement.

The Tenant is claiming the return of his full pet damage and security deposits in the sum of \$1,350.00, plus interest from February 1, 2018. In addition, the Tenant requests two months' compensation for rent in the amount of \$2,700.00 as well as compensation for loss of wages in the amount of \$150.00. It is his position that he was wrongfully evicted and that he is entitled to payment of rent and for his lost wages from taking a day off work to relocate to a new residence.

The Tenant's total claim is:

Security deposit	\$ 700.00
Pet damage deposit	650.00
Rent rebate	2,700.00
Lost wages	150.00
Filing fee	<u>100.00</u>
TOTAL:	\$4,300.00

The Landlord claims that the tenancy was scheduled to end December 31, 2017 under the terms of the agreement. The Landlord says she attempted to communicate this to the Tenant, and that the relationship was strained at that point. She served a One Month Notice to End Tenancy for Cause dated January 1, 2018 on the Tenant for "repeatedly late rent" and other reasons, with an effective date of February 1, 2018.

The Tenant did not dispute that notice through the Residential Tenancy Branch. A final walk through was completed on the move-out date, but no paperwork or report was exchanged or signed by the parties. The Tenant's girlfriend returned the keys to the Landlord later that evening, but the Landlord did not return the security deposit.

The Landlord claims that the rental unit was in need of cleaning for two days at the end of the tenancy and that every corner needed cleaning. She presented a receipt of

\$300.00 for an associate who helped do the cleaning, and she claims \$174.00 for lost wages for her time as well.

The Landlord indicated that she was unable to move in new renters until February 3, 2018 and she is claiming \$103.00 for lost rent revenue for the first part of February. The Landlord stated that there were holes in the walls in the living room and bedroom; she estimates the cost to patch and paint the damage to be \$500.00. There were no photographs, no witness statements and no condition inspection report to document the condition before or after the tenancy.

The Landlord also states that the Tenant owes for utilities and copies of two invoices were submitted into evidence, which indicated outstanding charges of over \$500.00. She states that some of it has been paid off directly by the Tenant, but that \$282.74 remains outstanding. Finally, the Landlord claims \$100.00 for the filing fee, and she concluded that the following is the total of her claim against the Tenant:

Cleaning	\$300.00
Lost wages	174.00
Rent revenue loss	103.00
Wall repair	500.00
Utilities	282.74
Filing Fee	<u>100.00</u>
 TOTAL:	 \$1,459.74

The Landlord was asked to provide any additional evidence to support her initial claim of \$4,000.00 against the Tenant, but the items listed above were the only items she states were being claimed against the Tenant and his security deposit.

The Tenant responded to this claim by stating that he left the rental unit in cleaner condition than when he moved in. He had the help of a cleaning professional and his mother to clean the rental unit before he left. He argues that there was no documentation or condition inspection report at the start or end of the tenancy to document any need for further cleaning, and he disputes the claim for cleaning costs and lost wages, as well as the rent revenue losses. He says that he left the rental unit in good condition and that he was a good tenant.

He does not recall any holes in the walls and disputes that they even exist. He denies being responsible for any wall repair costs.

Finally, he states that the utilities were placed into his name and that when he moved, he transferred the balance to his new residential address, where he has since paid any outstanding charges from the tenancy. He denies owing the Landlord any money for utilities or that he ever agreed to pay the Landlord for utilities in addition to the monthly rental amount.

### Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities.

### Tenant's Claim:

Under section 47 of the Act, a tenant who is served with a Notice to End Tenancy for Cause has ten days to dispute the notice or the tenant is *conclusively presumed* to have accepted the notice to end the tenancy:

*47. ...(4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.*

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is **conclusively presumed to have accepted** that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date. (bolding added)*

The Tenant did not file a dispute to the Notice within ten days. The Tenant moved out by the stated effective date of February 1, 2018 and then filed this claim on March 16, 2018, over two months after the Notice to End Tenancy was delivered. I find that he accepted the end of the tenancy and can no longer bring forth a claim to dispute the notice on its merits or claim expenses from the eviction made under section 47. Accordingly, I find that the Tenant's claims for lost wages and a rent rebate due to his relocation to a new residence must be dismissed, as he failed to mitigate his losses by not filing a claim within the 10 days.

With respect to the claim for the pet damage deposit, I find that the Tenant has failed to prove that a pet damage deposit was requested or paid to the Landlord. The Landlord disputed this claim, and there was no evidence of any payment or a receipt to document any payment of a pet damage deposit. Accordingly, the claim for the pet damage deposit of \$650.00 is dismissed due to insufficient evidence.

Under section 38 of the Act, a landlord may retain a security deposit for a limited period of time at the end of a tenancy, following which the landlord must either return the deposit or file a dispute application:

**38 (1) Except as provided in subsection (3) or (4) (a), *within 15 days after the later of***

*(a) the date the tenancy ends, and*

*(b) the **date the landlord receives the tenant's forwarding address in writing,***

*the landlord must do one of the following:*

*(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit. (bolding added)*

Both parties provided evidence that the tenancy ended on February 1, 2018. It was agreed that the Landlord received written notification of the Tenant's forwarding address on March 26, 2018 .

The Landlord filed her Application on April 2, 2018, which is within the 15 days required under section 38. Accordingly, I find that she was entitled to hold the security deposit in trust until such time as the issues could be brought before an Arbitrator to be determined. The distribution of the security deposit is dependent on the outcome of the claim the Landlord has brought against the Tenant for cleaning and damages.

Landlord's Claim:

Under section 37 of the Act, a tenant must leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Landlord has presented a receipt for cleaning charges of \$300.00 and a claim for her lost wages. It was her testimony that the rental unit was in need of cleaning and that she lost rent revenue while preparing it for the new renters who moved in two days later. However, the Tenant disputes this and testified that the unit was left clean and that there were no concerns during the walk-through inspection at the end of the tenancy.

The Landlord has the burden of proving the cleaning that needed to be done. However, she did not present a move-out Condition Inspection Report, which is a requirement under section 35 of the Act:

- 35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
- (a) on or after the day the tenant ceases to occupy the rental unit, or*
  - (b) on another mutually agreed day.*
- (2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (3) ***The landlord must complete a condition inspection report in accordance with the regulations.***

***(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.***

*(5) The landlord may make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*

*(b) the tenant has abandoned the rental unit. (bolding added)*

The purpose of using a Condition Inspection Report is to document the condition of the rental unit before and after a tenancy so that any damage or cleaning required can be identified and liability assigned. The Landlord has failed to comply with section 35 and furthermore, she did not submit any witness statement or photographs to prove that the rental unit was not “reasonably clean” at the end of the tenancy. As there is insufficient evidence to support the claim that the Tenant ought to have done additional cleaning, this part of the claim must fail.

For the same reasons, I cannot award any rent revenue losses or lost wages. The Landlord has not provided evidence to prove that this Tenant left the rental unit in such a state that it could not be rented out at the end of the tenancy, and there is no proof of lost wages.

Finally, the Tenant is liable for any damage to the unit and any estimated repairs costs. The Landlord failed to submit any inspection report, photographs or witness statement to verify the existence of holes in the drywall, which the Tenant disputes. Without any evidence of damage, I find that the Landlord has failed to provide sufficient evidence to support the claim for estimated repair costs of \$500.00, which is dismissed.

With respect to the payment of utilities, I find that the Landlord has failed to prove that the Tenant agreed to pay her for these utility charges. The older invoices submitted by the Landlord dated January 22, 2018 and February 5, 2018 are in the name of the Tenant only.

I find that the evidence showed that the Tenant placed the utility into his name for billing purposes, and I find that he is credible when stating that he took care of the charges when the balance was transferred over to his new residence. The Landlord did not



provide evidence that the Tenant agreed in writing to pay her for these charges, nor any proof of the remaining outstanding balance which she claims is still owing against this account. Accordingly, the Landlord's claim for unpaid utilities is dismissed.

As the Tenant had some success with his claim, I am awarding him the \$100.00 filing fee. The Landlord is required to return the security deposit of \$700.00 to the Tenant forthwith, and to pay the Tenant his filing fee of \$100.00. A monetary order in the total sum of \$800.00 will be issued in favour of the Tenant.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

### Conclusion

The Landlord shall pay forthwith to the Tenant the sum of \$800.00.

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: October 22, 2018

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Residential Tenancy Branch