



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or losses, permission to retain the security deposit and pet damage deposit (“the deposits”), and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and one of the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages or losses under the *Act*?
- Is the Landlord entitled to retain the deposits for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

### Background and Evidence

The parties agreed that the tenancy began on March 1, 2016. Rent in the amount of \$1,400.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 at the outset of this tenancy. Both parties agreed that the Tenants gave notice to end their tenancy to the Landlord on May 1, 2018, with an effective date of May 31, 2018. The parties agreed that they conducted a walk-through inspection of the rental unit on May 29, 2018, and that the Landlord took possession of the rental unit that same day. The Landlord testified that no written move-in or move-out inspection was completed for this tenancy.

The Landlord testified that he had been out of the country on vacation when the Tenants gave their notice to end the tenancy and had not been able to attend the unit until he returned around the end of May. The Landlord testified that he had to spend eight hours cleaning the rental unit at the end of tenancy as the Tenants had left the unit dirty. The Landlord also testified that he was not able to find a suitable new tenant to take over the rental unit until September 2018. The Landlord testified that he had first offered the rental unit to an employee, but they had turned it down and that around mid-June 2018, he started to advertise online to find a new tenant. The Landlord testified that they had a lot of interest from potential renters but that he didn't find anyone he approved of until just recently.

The Tenant testified that they physically moved out of the rental unit on May 9, 2018. The Tenant testified that they completely cleaned the rental unit and that they had returned the rental in good condition.

The Landlord is seeking \$1,904.00; comprised of \$504.00 for eight hours of cleaning and \$1,400.00 in the loss of rental income for June 2018.

### Analysis

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

Section 45(2) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

#### **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*

In this case, I find that the Landlord received the Tenants' notice to end the tenancy on May 1, 2018. Based on when the Landlord received the Tenants' notice, I find that this tenancy could have ended, in accordance with the *Act*, before June 30, 2018.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants breached section 45 of the *Act* when they did not provide sufficient notice to end their tenancy and that this breach resulted in a loss of rental income to the Landlord. However, I also find that the Landlord did not act reasonably to minimize his damages or losses due to the Tenants' breach when waited for six weeks before he attempted to try and re-rent the rental unit.

I understand that the Landlord had been out of town when the Tenants gave their notice to end their tenancy. However, the fact that the Landlord was not in town when the Tenants decided to end their tenancy early does not negate the Landlord's responsibility to mitigate his losses by taking the appropriate steps to attempt to re-rent the unit as soon as he found out the Tenants had decided to end the tenancy.

I find that the Landlord was in breach of section 7(2) of the *Act* when she did not take steps to rent the rental unit after being notified that the Tenants had decided to end the tenancy early. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of June 2018.

Additionally, I accept the testimony of both parties that the Landlord did not conduct the move-out inspection at the end of this tenancy. Section 35 of the *Act* states the following:

**Condition inspection: end of tenancy**

- 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.

I find that the Landlord was in breach of section 35 of the *Act* by not completing the move-out inspection in accordance with the *Act*. Section 36(2) of the *Act* specifies the consequences for a landlord's non-compliance with the inspection requirements.

**Consequences for tenant and landlord if report requirements not met**

- 36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
  - (b) having complied with section 35 (2), does not participate on either occasion, or
  - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 36 of the *Act*, I find that the Landlord has extinguished his right to make a claim against the deposits held of this tenancy.

Additionally, I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the rental unit at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the Landlord has not submitted any documentary evidence to support his claim for compensation for cleaning the rental unit in these proceedings.

For these reasons, I dismiss the Landlord's claim for the recovery of the costs associated with cleaning the rental unit.

As the Landlord has not been successful in his application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

The Landlord was ordered, during this hearing, to return the security and pet damage deposits to the Tenants within 15 days of the date of this hearing.

If the Landlord fails to return the security deposit and pet damage deposit, the Tenant may file for a hearing with this office to recover his deposits for this tenancy.

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the security deposit and pet damage deposit to the Tenants within 15 days of this hearing.

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: September 19, 2018

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Residential Tenancy Branch