



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, ER

### Introduction

The tenant applies to recover the equivalent of one month's rent due when a landlord issues a two month Notice to End Tenancy and to recover the equivalent of two months' rent alleging the landlords failed to carry out the stated purpose for ending this tenancy. He also seeks return of a security deposit and an award for damage and loss suffered as the result of a water leak in his bedroom in the rental unit. Lastly, he seeks recovery of the value of tools claimed to have been taken by the landlords and for the repair of a doorknob.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the landlords failed to carry out the purpose for their ending of this tenancy? Have they failed to compensate the tenant for the statutory one month's rent? Have they any right to continue to hold the security deposit money? Have the landlords failed to carry out their obligation to maintain the premises, resulting in a water leak? Have they wrongfully retained some the tenant's belongings or owe him money for repair work?

### Background and Evidence

The rental unit is a one bedroom basement suite in the landlords' home. The tenancy started in November 2015. According to the tenant it ended June 27, 2018. According to the landlords it ended July 6, 2018. The current rent was \$725.00 per month, due on the first of each month. The landlords hold a \$350.00 security deposit. It appears the tenant send the landlords a text on July 24, 2018 with his forwarding address in writing. That was the same day this application was made.

During the winter of 2017-2018 there was a water leak in the wall of the tenant's bedroom. The tenant properly informed the landlords. The landlords retained help. The cause of the leak was not readily apparent but it ultimately was determined to have been caused by a failed hot water pipe supplying hot water to the radiator in that bedroom. The leak was repaired.

The tenant claims that he suffered a mould infestation as a result and provides a number of photographs of the area.

In or around February 2018 the landlords served the tenant with a two month Notice to End Tenancy for landlord use of property. The Notice was in the statutory form. Its stated reason was the rental unit would be occupied by a close family member. As a result of the Notice the tenant vacated. He says that no one is living in the rental unit. The blinds never move.

The tenant says that a drywall gun, a hammer and maybe a pair of pliers were taken, he thinks, when the landlords entered the rental unit on June 28. He says he repaired a door knob and should be paid for that.

The landlord Ms. A. testifies that there was a leak in the tenant's bedroom but they could not determine the source of the leak. Finally she requested a plumber to open up the wall behind the leak and it was discovered that a nail had been nailed into the pipe during home construction in 2009. The leak was repaired and the wall re dry walled.

She denies the tenant repaired a door knob.

She says that it has always been intended for her mother to occupy the basement suite but presently it cannot be occupied because of the marijuana stink left by the tenant. As soon as the stink dissipates, her mother will move in.

### Analysis

#### The Two Month Notice

Under s. 51 of the *Residential Tenancy Act* (the “*Act*”) a tenant receiving a two month Notice is entitled to be compensated the equivalent of one month’s rent at the end of the tenancy. Alternatively, the tenant is at liberty to simply offset the last month’s rent as compensation.

The evidence does not show that the tenant paid rent for April, May, June or July 2018, months in which he continued to possess the premises or kept his belongings there. Without this evidence it cannot be determined whether rent had been offset. I dismiss this item of the claim.

Section 51 of the *Act* as it was at the time this Notice was given, provided that if the rental unit is not used for that stated purpose in the Notice for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice the landlords must pay the tenant the equivalent of two months’ rent.

As of the date of this application, July 24, 2018, the intended occupant, Ms. A.’s mother had not moved in. I find that the landlord had a reasonable excuse for delaying the move-in and the reasonable period stated in s. 51 had not expired, because the rental unit was not reasonably habitable due to the lingering odour of marijuana. Further, the landlords wrote to the tenant in April 2018 stating they would be doing some work on the suite after he left and so some period of vacancy was expected.

The tenant is a frequent user of marijuana. Indeed, at this hearing his speech was slightly slurred and he displayed lapses in concentration. He admitted that he was under the influence of marijuana. He has a permit to consume it due to an anxiety disorder. I consider his claim that he only smoked it outside to be very unlikely. Indeed there is in evidence correspondence from the landlords requesting he cease smoking it.

I'm satisfied that the rental unit retained the strong odour of marijuana after the tenant left and that was a good reason for not moving the landlord Ms. A.'s mother in immediately. This aspect of the tenant's claim is dismissed.

### The Security Deposit

A landlord is not entitled to unilaterally retain a security deposit at the end of a tenancy. Once a tenancy has ended and once the tenant has provided a forwarding address in writing, the landlord must either repay the deposit or make an application to keep it. The landlords here have done neither. I award the tenant recovery of the \$350.00 security deposit.

If the landlords consider they have a claim against the tenant, they are free to make their own application.

### Damages for Water Leakage

There is no dispute there was a water leak in the tenant's bedroom. Having regard to the fact that the home was less than ten years old and that the leak was caused by a defect during construction, not readily observable, I conclude that it has not been shown that the landlords breached any particular duty or obligation to the tenant.

Having regard to the circumstances it has not been shown that the landlords were tardy or neglectful in attending to repair and remediation of the problem.

The tenant's evidence shows some trace of dark spotting, likely a variety of mould, establishing itself near the moist area. It has not been shown that the mould was of a dangerous or harmful type or that it was other than mould spores that would easily be eradicated by a simple cleaning after the area dried.

I dismiss this item of the claim.

### Loss of Tools

The tenant has not proved on a balance of probabilities that the landlords took his tools. It is mere speculation. I dismiss this item of the claim.

### Repair of Door Knob

The tenant says he repaired it. The landlord Ms. A. says he did not. There is no other evidence to base any choice between these two competing claims. As a result, the tenant has not proved this claim on a balance of probabilities and I dismiss it.

### Conclusion

The tenant is entitled to recover his \$350.00 security deposit. He will have a monetary award against the landlords in that amount. No filing fee was paid.

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 26, 2018

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Residential Tenancy Branch