



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MNR MNSD FF  
Tenant: MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 8, 2018. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. Both Landlords were present and they also had their counsel with them. They will be collectively referred to as the Landlord. The Landlord confirmed receipt of the Tenant’s application and evidence, and the Tenant confirmed receipt of the Landlord’s application and evidence.

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 are described in this Decision.

### Issue(s) to be Decided

#### Tenant

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to the return of the security deposit?

#### Landlord:

- Is the Landlord entitled to compensation for unpaid rent or utilities?

- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy ended on May 1, 2018, the day the Tenant moved out.
- The Landlord still holds \$775.00 as a security deposit.
- Rent was \$1,650.00 per month

### Tenant's application:

The Tenant presented a monetary worksheet which identified the following items:

**#1 and #2** – The Tenant is seeking the return of his damage deposit in the amount of \$825.00. However, in the hearing, he stated that it was actually \$775.00, which the Landlord agreed with. The Tenant amended his worksheet to ask for \$775.00 back because the Landlord never returned the deposit. Under item #2, the Tenant is asking for the Landlord to pay for his new security deposit at his new residence in the amount of \$800.00.

**#3** – The Tenant is seeking 2 months' rent in compensation because the Landlord failed to move into the rental unit, as indicated on the 2 Month Notice to End Tenancy (the Notice). The Notice was provided into evidence and the Tenant received the Notice on January 26, 2018. This Notice was issued for the following reason:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenant stated that the Landlord renovated for a little while at the beginning of May, 2018, after he moved out, and then listed the unit for sale towards the end of May. The Landlord stated that their relationship with the Tenant had broken down significantly by

the time the renovations were underway, and the police became involved due to the dysfunction. The Landlord stated that they became aware that the Tenant had actually moved into a nearby unit, and decided to sell their unit, rather than move in, because they were afraid of the Tenant. The Tenant stated that the Landlord decided to sell the unit before the dysfunction developed. However, the Landlord stated this is not true and they had every intention of moving in until they became fearful of the Tenant, who had decided to move in very close by.

**#4 and #6**– The Tenant is looking to recover moving expenses (#4) in the amount of \$295.00, and utility hook-up fees (#6) he paid to hook up utilities at his new residence in the amount of \$45.00 because the Landlord evicted him in bad faith.

The Landlord stated that they had every intention of moving in, but that the Tenant caused them to change their mind with his aggressive and threatening behaviour. The Landlord stated that this forced them to sell, rather than move in, although the Tenant stated that this decision to sell came before their relationship degraded to where it is now.

**#5** – The Tenant stated that he had a verbal agreement with the Landlord whereby he would perform some renovation work in the rental unit in exchange for a reduced rent. The Tenant stated that he was issued the 2-Month Notice in January, and it was effective at the end of March 2018. The Tenant stated that he was unable to find a place to move to, which is why he stayed an extra month. The Tenant stated that he made an agreement with the Landlord where he would take one month free rent (March 2018), as is typically paid when a 2-Month Notice is issued, and he would pay for the month of February 2018 in labour. The Tenant stated that he had an agreement with the Landlord where he would do some minor renovations in exchange for rent. The Tenant acknowledges that he still owes rent for April 2018, as he stayed only when he realized he didn't have another place to go.

The Landlord stated that they did have an agreement (verbal), with the Tenant but that it was only for half a month's rent. The Landlord also stated that they were not happy with the work the Tenant did or how long it took. The Landlord stated that the Tenant is misrepresenting their verbal agreement.

For this monetary item, the Tenant stated that he is seeking \$1,775.00, which is the amount of extra money the Landlord would have had to pay if they hired a contractor. The Tenant stated he is doing this to highlight that the Landlord is getting a good deal.

Landlord's application:

The Landlord stated that they are seeking to recover rent as follows:

- \$825.00 – half month's rent for February 2018
- \$1,650.00 – full month's rent for March 2018
- \$1,650.00 – full month's rent for April 2018

The Landlord stated that the Tenant did not pay any rent from February 2018 onwards. As stated above, the Landlord stated she had a verbal agreement with the Tenant where he would complete some work in the suite, in exchange for a rent reduction. The parties disagree on what amount was to be compensated, and for what periods the Tenant was allowed to stay for, in exchange for the work he did. It appears that the work exchange was largely pertaining to February. The Landlord indicated they were not happy with the quality of the Tenant's work.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, each party has the burden to prove their claim and support the basis for their own application. Each application will be addressed individually, as follows:

First, I turn to the Landlord's application for monetary compensation for unpaid rent, and to withhold the security deposit to offset the amount are seeking.

With respect to the amount of rent that is due, I note that the parties agree that monthly rent is set at \$1,650.00, as reflected in the written Tenancy Agreement. With respect to the Landlord's claim for compensation for half of February and March, 2018, I find there is insufficient evidence to show what the actual agreement was with the Tenant, with respect to the work he was to complete in lieu of rent, how much he was to be compensated, and whether or not the work was actually completed as requested. Verbal agreements are inherently difficult to resolve and enforce especially when two parties provide differing versions of what the agreement was.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In

the case before me, I find the Landlord has failed to provide sufficient evidence as to what the agreement was with respect to rent was owed for February 2018. I note the parties agree that there was an agreement for the Tenant to do work in lieu of rent for this month. However, the parties do not agree with what the agreement entailed.

Without further evidence, I find the Landlord has not sufficiently demonstrated what they are owed for the month of February 2018, which was when the Tenant and the Landlord had intended for most of the work to be done. I dismiss the Landlord's claim for rent for the month of February, given the lack of clarity surrounding their agreement.

With respect to March 2018 rent, I find the Landlord is not entitled to this month, because they were required to compensate the Tenant an amount that is equivalent to 1 months' rent, pursuant to section 51(1) of the Act, after issuing the 2-Month Notice (in addition to the compensation under section 51(2) referred to below).

With respect to April 2018 rent, I note the parties agree that the Tenant never paid April 2018 rent, and that he should have. I award the Landlord this amount.

In summary, I award the Landlord a monetary order as follows:

- April 2018 rent – \$1,650.00

The Landlord's claim against the security deposit will be addressed at the end of this decision.

Next, I turn to the Tenant's claim for compensation. I will address each item on his worksheet in the same order above:

**#1 and #2** – The Tenant's request for the return of this security deposit in the amount of \$775.00 will be addressed at the end of this decision. Under item #2, the Tenant is asking for the Landlord to pay for his new security deposit at his new residence in the amount of \$800.00. However, I decline to award this amount. The Tenant did not indicate on what basis this amount would be compensable.

**#3** – The Tenant is seeking 2 months' rent in compensation because the Landlord failed to move into the rental unit, as indicated on the 2 Month Notice to End Tenancy (the Notice). The Notice was provided into evidence and the Tenant received the Notice on January 26, 2018. This Notice was issued for the following reason:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Although the Landlord provided some rationale as to why they sold the rental unit rather than move in, I find this portion of the Act is fairly clear cut, in that, regardless of the reasons, if the Landlord fails to perform the stated purpose as listed on the 2-Month Notice, they are required to pay the Tenant an amount that is equivalent to two month's rent.

Section 51 of the Act has changed since May of 2018. However, as of the time the Notice was issued, Section 51(2) of the Act, stated as follows:

Tenant's compensation: section 49 notice

- 51 (2)** In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) **the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the undisputed evidence before me indicates that the Landlord sold the property, rather than moving in for at least 6 months after the effective date of the Notice. I find the Legislation on this matter is black and white, and although the Landlord provided some rationale as to why they didn't move in, this rationale is not a factor in determining whether or not compensation is due under this version of the legislation. As a result, I find the Tenant is entitled to monetary compensation which is equivalent to double the monthly rent payable under the tenancy agreement (2 x \$1,650.00).

**#4 and #6**– The Tenant is looking to recover moving expenses (#4) in the amount of \$295.00, and utility hook-up fees (#6) he paid to hook up utilities at his new residence in the amount of \$45.00 because the Landlord evicted him in bad faith.

With respect to the Tenant's request for moving expenses and for utility hookup fees, I decline to award these amounts, as they are, to some degree, inevitable costs associated with any tenancy. I find that some of these costs should be expected and anticipated in any rental situation, as tenancies are usually inherently time limited. Further, the compensation for situations such as this, where the Landlord did not follow through with the reason behind the 2-Month Notice, is issued under section 51(2) of the Act. The Tenant has already been awarded this amount, as stated above.

**#5** - For this monetary item, the Tenant stated that he is seeking \$1,775.00, which is the amount of extra money the Landlord would have had to pay if they hired a contractor. I have considered this request. However, neither of the parties have established what the terms of the agreement were. Given the lack of clarity around what the parties agreed to, I dismiss this item, without leave to reapply.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since both parties were partly successful, I decline to award the filing fee to either party.

In summary, the Landlord is entitled to \$1,650.00 for April 2018 rent for their application. I also find the Tenant is entitled to \$3,300.00 for their application. After offsetting these amounts, I find the Tenant is owed \$1,650.00. Since the Landlord holds the security deposit in the amount of \$775.00, I order that they return this deposit, in addition to the \$1,650.00. The Tenant is awarded a monetary order for \$2,425.00.

### Conclusion

The Tenant is granted a monetary order pursuant to 67 in the amount of **\$2,425.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 13, 2018

---

Residential Tenancy Branch