



# 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 the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on June 21, 2018. The Landlord applied for a monetary order for damages to the rental unit, for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were 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 are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damages?
- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

Both parties testified that the tenancy began on October 1, 2013, as a month to month tenancy agreement. Rent in the amount of \$1,348.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$650.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenant issued a written notice to end her tenancy on May 2, 2018, with an effective date of May 31, 2018.

The Tenant testified that in April 2018 the Landlord had advised her that she was selling the rental property and that the Tenant may have to move out if the new owners wanted to use the rental unit themselves. The Tenant testified that she decided to move and gave verbal notice to the Landlord on May 1, 2018, of her intent to end her tenancy. The Tenant also testified that she gave her written notice to the Landlord the next day.

Both parties testified that the Tenant had asked for a rent reduction due to having to move and that it was agreed between the Landlord and the Tenant that the Tenant would only need to pay a half month rent for May 2018.

The Tenant testified that she had told the Landlord to just keep her security deposit as payment for May 2018 rent.

The Landlord testified that she had told the Tenant that she would not agree to the use of the security deposit to pay rent and that the Tenant needed to pay the rent for May. The Landlord testified that the Tenant never paid the rent for May 2018.

The parties also agreed that the Tenant moved out of the rental unit on June 7, 2018, and that she had not paid rent for June 2018. The Landlord testified that she did not attempt to re-rent the rental after the Tenant moved out.

The Tenant testified that she did not pay rent for June as the Landlord was selling the rental unit and that she did not feel staying a few extra days to finish moving out and complete cleaning was a problem. The Tenant testified that the rental unit had been returned to the Landlord clean.

The Landlord testified that there was additional cleaning that needed to be completed to the rental unit after the Tenant left. The Landlord testified that she paid a local cleaning company \$240.00 to clean the blinds, the windows and the washing machine at the end of the tenancy.

### Analysis

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

I find that the parties entered into a month to month term tenancy (periodic tenancy), beginning on October 1, 2013, in accordance with the *Act*.

I accept the agreed upon testimony of both the Landlord and the Tenant that there had been an agreement between these parties for the Tenant to pay a reduced rent, in the amount of \$674.00, for the month of May 2018. I also accept the agreed upon testimony of the parties that the Tenant did not pay her rent for May 2018. Therefore, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for May 2018, in the amount of \$674.00.

Section 45(1) 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

I find that the Tenant issued her notice to end her tenancy to the Landlord on May 2, 2018, with an end date of May 31, 2018. Pursuant to section 45 of the *Act*, I find that the Tenant would have had to issue her notice to end the tenancy no later than April 30, 2018, to end her tenancy as of May 31, 2018. Based on the date of the Tenants written notice, I find that this tenancy could not have ended in accordance with the *Act* until

June 30, 2018. Therefore, I find that the Tenant was in breach of section 45 when she failed to issue her notice in accordance with the *Act*.

The Landlord has also claimed for compensation for the loss of a month's rent for June 2018. I accept the testimony of both parties that the Tenant moved out of the rental unit on June 7, 2018, and that the Tenant did not pay rent for June 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.

I accept the testimony of the Landlord that she had intended to sell the property in which the rental unit was located and that she did not make attempts to re-rent the rental unit after the Tenant move out. I find that the Landlord had no intention of re-renting the rental unit for June 2018 and therefore, did not suffer a loss of rental income. I find that the Landlord has not proven that she suffered a loss due to the Tenants breach of the *Act*. Consequently, I dismiss the Landlord's claim for compensation for the loss of rental income for June 2018.

However, I find that the Tenant did not move out, on May 31, 2018, in accordance with her notice and remained in possession of the rental unit until June 7, 2018. Section 57 of the *Act* states:

**“What happens if a tenant does not leave when tenancy ended**

**57 (1)** In this section:

**"new tenant"** means a tenant who has entered into a tenancy agreement in respect of a rental unit but who is prevented from occupying the rental unit by an overholding tenant;

**"overholding tenant"** means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

(4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings."

I find that the Tenant did overhold the rental unit by seven days in June 2018 when she did not move out in accordance with her notice. However, I also find that there is no evidence before me to show that the Landlord was prevented from having a new renter occupy the rental unit due to the Tenant overholding in this case. Therefore, pursuant to section 57(3) of the *Act*, I find that the Tenant is responsible for the rent for the period that the Tenant overheld the rental unit.

I find that the Landlord has established an entitlement to a monetary award for seven days of rent for June 2018, for the period in which the Tenant overheld the rental unit. I grant the Landlord an award of \$314.53, comprised of seven days rent at the rate of \$44.93 per day.

Monthly Rent	\$1,348.00
Days in Month	30
Daily Rate	\$44.93
Day to be refunded	7
Compensation Due	\$314.53
<b>Total due</b>	<b>\$314.53</b>

Additionally, the Landlord has claimed for \$240.00, to recover her cost in additional cleaning that was needed in the rental unit at the end of this tenancy. I accept the testimony of both parties that the move-out inspection had not been completed in accordance with the *Act* for 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.
- (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.

I find that the Landlord is in breach of section 35 of the *Act*, by not completing the required move-out inspection.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of the tenancy.

Throughout these proceedings, the parties to this dispute offered conflicting verbal testimony regarding the need for additional cleaning for this rental unit at the end of this tenancy. 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.

I have reviewed the documentary evidence submitted by the Landlord and find that there is insufficient evidence before to show that the rental unit required additional cleaning at the end of the tenancy. Therefore, I find that the Landlord has failed to provide evidence that shows the cleaning she is claiming for had been required; consequently, I dismiss the Landlord's claim for the recovery of cleaning costs.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord an award of \$438.53, consisting of \$674.00 in rent for May 2018, \$314.53 in rent for June 2018 and the recovery of the \$100.00 filing fee for this hearing, less the \$650.00 security deposit the Landlord is holding for this tenancy.

<u>Awarded Item's</u>	<u>Due</u>
May Rent	\$674.00
June Rent	\$314.53
Cleaning	\$0.00
	\$988.53
Security Deposit	<u>-\$650.00</u>
	\$338.53
Filing fee	\$100.00
<b>Due</b>	<b>\$438.53</b>

Conclusion

I find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$438.53**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 27, 2018

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Residential Tenancy Branch