



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 21 HOLDINGS LTD (SUNDACE  
APARTMENT) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed, and to recover the filing fee from the landlord.

This hearing commenced on November 29, 2018, and interim decision was made which should be read in conjunction with this decision. The parties agreed that the interim order was complied with.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to monetary compensation for money owed?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on August 1, 2017 and was to expire on July 31, 2018. Rent in the amount of \$2,900.00 was payable on the first of each month. The tenant paid a security deposit of \$1,450.00. The tenancy ended on June 28, 2018.

*Tenant’s testimony was through their interpreter*

The tenant testified that they ended their tenancy at the end of June 2018. The tenant stated that they paid their rent in advance for July 2018, to cover the balance of the fixed term. The tenant stated that they were told by the landlord that if they were able to re-rent the unit for the month of July 2018, that they would be returned the rent.

The tenant testified that they spoke to the new tenant that was currently living in the subject rental unit. The tenant stated that they were told by the new tenant that their tenancy commenced on July 1, 2018. Although they did not move into the unit until July 9, 2018, as they were new to the country.

The tenant testified that because their rental unit was re-rent for July 2018, that they are entitled to the return of their rent.

The landlord testified that the tenant was notified that they only had tenants interested in renting the premises for August 2018. The landlord stated as a result they entered into a tenancy agreement on May 26, 2018, with a new tenant (the "tenant A") to move into the subject rental unit on August 1, 2018.

The landlord testified that a different rental unit became available and it was suggested to the tenant A", that this would be a better unit for them because it was on a lower floor as they had a child. The landlord stated that tenant A's then signed a new tenancy agreement for the lower rental unit. The tenancy still commenced on August 1, 2018, and the unit remained empty for the month of July 2018.

The landlord testified that they then entered into a new tenancy agreement with a different tenant (the "tenant B") for the subject unit. The tenant B's tenancy commenced on July 9, 2018, when they moved into the premises.

The landlord testified that the tenant B was only able to move into the subject unit because they were only able to moved tenant A to the lower rental unit due to another vacancy. The landlord stated that this was in the best interest for all of the building because they had a child, and that rental unit remained empty for the month of July 2018.

The landlord argued that they were in the same position of loss rent for July 2018, because tenant A did not move in the lower unit until August 1, 2018. So the tenant is not entitled to return of July 2018, rent.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Residential Tenancy Policy Guideline #3 in part reads,

“Even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued. ...”

[Reproduced as written]

I accept the evidence of both parties that the subject unit of this hearing was re-rent for the month of July 2018.

However, the tenant's rental unit was only re-rent for the month of July 2018, because there was another vacancy in the building. Due to this vacancy the landlord was able to move tenant A to that unit. Tenant A's tenancy still commenced on August 1, 2018, which result in the landlord not obtaining July 2018, rent for the unit.

Tenant B could not have moved into the subject unit had the landlord not moved tenant A.

Although I accept the Residential Tenancy Policy Guideline #3, is normally applied when the landlord is making a claim for damages; however, I find the same principles would apply when the tenants pay rent in advance and seek to recover the over payment.

I find the tenant has not proved a violation of the Act by the landlord. I find the tenant is not entitled to recover rent for July 2018. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed. .

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: January 21, 2019

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Residential Tenancy Branch