



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### 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 to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

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.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenant has lived in the building for approximately 25 years. The parties agreed this particular tenancy began on June 1, 2003. Current rent in the amount of \$1,109.00 was payable on the first of each month. The tenant paid a security deposit of \$345.00. The tenancy ended on August 1, 2018.

The landlord testified that they should be entitled to prorated rent for two (2) days as the tenant did not vacate on July 31, 2018, and their child could not move into the unit until August 2, 2018.

The landlord testified that they seek compensation for damages that have occurred to the rental since the tenant moved into approximately 25 years ago. The landlord confirmed at the hearing that they have not done any painting in the 25 years.

The landlord was explained in the hearing that any damages that may be found will be depreciated by the age of the item, such a painting has been determined by the Residential Tenancy Policy Guideline 40 – Useful life of building element to have a useful life of four (4) years, and the landlord has not painted in 25 years. The paint would have exceeded its useful life span by 21 years and the tenant would not be responsible for any repainting.

The landlord withdrew their claim for damages.

The tenant testified that they were having problems with the movers and they were unable to vacate the premises until the evening of August 1, 2018. The tenant stated that the landlord was aware of this issue.

### 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 landlord 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.

In this case, the tenant did not vacate the premises on July 31, 2018, as required by the Act. I find the tenant overheld the rental unit for one (1) day as they vacated on August 1, 2018. I find the landlord is entitled to recover one (1) day of prorated rent, not two (2) as claimed. Therefore, I find the landlord is entitled to recover unpaid rent in the prorated amount of **\$35.75**.

I find that the landlord has established a total monetary claim of **\$85.75** comprised of the above described amount and half of the \$100.00 of the filing fee paid for this application. This likely could have settled if the landlord did not make a claim for damages.

I order that the landlord retain the security deposit of **\$85.75** full satisfaction of the claim and the landlord must return to the tenant the balance due of the security deposit of 259.25, plus \$12.22 interest in the total amount of **\$271.47**.

Should the landlord fail to return the balance due to the tenant, I grant the tenant an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted a formal order for the balance due of their security deposit.

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 09, 2019

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Residential Tenancy Branch