



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed.

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.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

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

Is the tenant entitled to a monetary order for money owed?

Background and Evidence

The parties agreed that the tenancy began on March 15, 2018. Rent in the amount of \$875.00 was payable on the 15th of each month. The tenant paid a security deposit and pet damage deposit in the total amount of \$875.00. The tenancy ended on September 28, 2018.

Landlord's application

The landlord claims as follows:

a.	Unpaid rent	\$475.00
b.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$575.00</b>

The landlord testified that the tenant gave short notice to end their tenancy. The landlord stated notice was given on September 13, 2018 and the tenant vacated on September 28, 2018.

The landlord testified that the tenant only paid a prorated rent in the amount of \$405.00 from September 15 to 29, 2018; however, the tenant is not entitled to prorated rent. The landlord seeks to recover the amount owed in unpaid rent in the amount of \$470.00.

The tenant testified that they verbally told the landlord on September 2, 2018, that they would be vacating the premises. The tenant stated that they did not understand that they had to give the landlord at least 30 days to end the tenancy.

Tenant's application

The tenant claims as follows:

a.	Return of rent paid	\$196.00
	<b>Total claimed</b>	<b>\$196.00</b>

The tenant testified that they were unable to move into the rental unit until March 21, 2018. The tenant stated that they should be entitled to recover prorated rent in the amount of \$196.00.

The landlord testified that the tenant was not in a rush to move into the rental unit. The landlord stated that this is the first they have heard the tenant wanted rent back.

### 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, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

### Landlord's application

How to end a tenancy is defined in Part 4 of the Act.

#### **Tenant's notice (month-to-month)**

**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*

...

In this case, I accept the evidence of both parties that the tenant gave notice to end the tenancy. However, the tenant's notice did not comply with section 45 of the Act, as the earliest date they could have legally ended the tenancy was October 14, 2018, as the month to month tenancy is based from the 15<sup>th</sup> to the 14<sup>th</sup> of each month.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$470.00**.

I find that the landlord has established a total monetary claim of **\$570.00** comprised of the above described amount and the \$100.00 fee paid for this application.

In this case, the landlord returned to the tenant the amount of \$400.00 of the Deposits and is currently holding the amount of \$475.00. I order that the landlord to retain the remainder of the Deposits of \$475.00 in partial satisfaction of their claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$95.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

During the hearing the landlord was claiming other amounts; however, that was not clear in their application. Late fees and unpaid utilities should be clearly notes in the application as section 59 of the Act, required the full particulars are to be given. Therefore, the only issued I considered at the hearing was unpaid rent.

#### Tenant's application

In this case, the parties entered into a tenancy agreement which commenced on March 15, 2018. While the tenant did not move into the rental unit until March 21, 2018, that matter should have been talk about with the landlord at the start of the tenancy. The tenant did not notify the landlord at any time that this was an issue. Furthermore, the tenant stated they only made the claim because the landlord wanted to recover unpaid rent.

Based on the above, I find the tenant has failed to prove a violation of the Act, by the landlord. Therefore, I dismiss the tenant's claim without leave to reapply.

Conclusion

The landlord is granted a monetary order and may keep the remainder of the Deposits held in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: February 14, 2019

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Residential Tenancy Branch