



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNDC, MNSD, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, loss of income, for the cost of painting and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for the return of the security deposit, for the return of utilities paid by him and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. Both parties confirmed receipt of each other's application for dispute resolution and evidence package. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing, the past tenant (NR) explained that she had moved out in January 2018 after providing both the landlord and her room mate with adequate notice. The landlord agreed that NR had informed him that she was moving out and testified that the tenancy continued with the male tenant (NG) being the sole occupant of the rental unit and providing rent cheques to the landlord.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the for unpaid rent, loss of income, for the cost of painting and for the recovery of the filing fee? Is the tenant entitled to the return of the security deposit, for the return of utilities paid by him and for the recovery of the filing fee?

### **Background and Evidence**

The parties agreed to the following: The tenancy started on October 01, 2017 for a fixed term of one year. The end date of the fixed term was September 31, 2018. The monthly rent was \$1,900.00 and did not include utilities. Prior to moving in the tenant paid a security deposit of \$950.00. The landlord is currently holding the security deposit. The landlord filed the move in and move out inspection reports into evidence.

On June 27, 2018, the tenant gave the landlord notice to end the tenancy. The tenant agreed that he cancelled the rent cheque that was due on July 01, 2018 and rent for this month was not paid. The tenant moved out on July 19, 2018. The tenant stated that he did not provide the landlord with a forwarding address

The parties agreed that the tenant had paid for city utilities until the end of the fixed term and was owed \$139.50, as he had moved out prior to the end date of the fixed term.

The landlord stated that the rental unit was left in a condition that required painting, due to nails and screws put into the walls by the tenant. The landlord stated that the rental unit was fully renovated by the previous owner just 2-3 months prior to the start of this tenancy.

The tenant testified that the unit was not freshly painted prior to the start of tenancy and drew my attention to the remarks in the move in inspection report that mention the presence of holes created by nails and screws. In addition, the tenant stated that he touched up nail holes he had made.

The landlord agreed that as of the date of the hearing he had not painted the rental unit but had obtained a quote for \$1,025.00 which he filed into evidence.

The landlord stated that he was unable to get a tenant for August 01, 2018. He agreed that he started advertising, after the tenant moved out. The landlord stated that the first advertisement was dated July 22, 2018. The tenant informed me that the house was up for sale and therefore the landlord was unable to get a tenant for August 2018. The landlord agreed that the house was listed for sale and that the listing expired sometime after the tenant moved out. The landlord did not renew the listing and was able to find a tenant for September 01, 2018. The landlord is claiming the income he lost for the month of August 2018.

The landlord is claiming the following:

1.	Cost of painting	\$1,025.00
2.	Rent for July 2018	\$1,900.00
3.	Loss of income for August 2018	\$1900.00
4.	Filing fee	\$100.00
	Total	<b>\$4,925.00</b>

## **Analysis**

### **Landlord's application:**

#### 1. Cost of painting - \$1,025.00

Based on the move in condition inspection report, I find that the walls did have nail and screw holes at the start of tenancy. If the previous owner had painted the rental unit, 2 months prior to the start of tenancy, the nail holes would have been filled prior to painting. In addition the landlord has not yet painted the unit as of the date of this hearing. The landlord's claim is dismissed.

#### 2. Rent for July 2018 - \$1,900.00

The tenant agreed that he had cancelled the rent cheque for July 2018 and that he owed the landlord rent for this month.

#### 3. Loss of income for August 2018 - \$1,900.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the both parties, I find that, on June 27, 2018, the tenant gave notice to end the tenancy effective July 31, 2018 which is prior to the end date of the fixed term but is before the day rent is due. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord testified that the rental home was listed for sale and the listing expired after the tenant moved out. Therefore when the tenant gave notice on June 27, 2018, the listing was active and would likely not attract renters. The landlord started advertising on July 22, 2018 which is about 3 weeks after he received notice from the tenant. It is more likely than not that the landlord would not be able to find a tenant for August 2018 by advertising on July 22, 2018 and because the home was listed for sale till the end of July 2018. Therefore I find that the landlord did not make enough effort to do whatever is reasonable to minimize his loss.

Pursuant to *Residential Tenancy Policy Guideline #3*, placing the property on the market for sale will not constitute mitigation. Accordingly, I find that the landlord is not entitled to loss of income for the month of August.

4. Filing fee - \$100.00

Since the landlord has proven a portion of his claim I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim as follows:

1.	Cost of painting	\$0.00
2.	Rent for July 2018	\$1,900.00
3.	Loss of income for August 2018	\$0.00
4.	Filing fee	\$100.00
	Total	<b>\$2,000.00</b>

**Tenant's application:**

The tenant applied for the return of the prorated cost of City utilities that was pre-paid by the tenant. The landlord did not dispute the tenant's claim of \$139.50 and accordingly I award the tenant this amount. The tenant is also entitled to the return of the security deposit in the amount of \$950.00.

Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$100.00. The tenant has established a claim of \$1,189.50.

Overall the landlord has established a claim of \$2,000.00 and the tenant has established a claim of \$1,189.50. I will use the offsetting provisions of section 72 of the

*Act* to grant the landlord a monetary order in the amount of \$810.50 which consists of the difference in the established entitlements of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$810.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$810.50**.

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: May 07, 2019

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Residential Tenancy Branch