



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, 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 unpaid rent, 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 evidence submissions. The tenant stated that they did not receive a copy of the Hydro bill. The landlord stated it was included in the package.

In this case, I do not find it prejudicial to the tenant to review the hydro bill. The bill is for a very short period, as the hydro was placed in the landlord’s name when the tenancy ended, January 31, 2019 and was taken out of the landlord’s name on February 25, 2019, when the new tenancy commenced.

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 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?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2018. Rent in the amount of \$900.00 was payable on the first of each month. The tenant paid a security deposit of \$450.00. The tenancy ended on January 31, 2019.

The landlord claims as follows:

a.	Loss of prorated rent and utilities for February 2019	\$ 994.47
b.	Cleaning	\$ 200.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,294.47</b>

The landlord testified that the tenant gave notice on January 16, 2019 to end the tenancy on January 31, 2019. The landlord stated that was insufficient notice to end the tenancy. The landlord stated that due to short notice they were unable to find a new renter for February 1, 2019. The landlord stated they were able to find a new renter and their tenancy commenced on February 25, 2019. The landlord seeks to recover loss of rent for February 2019, at the prorated rate of \$768.00.

The landlord testified that due to the tenant's failure to provide sufficient notice, they had to have the utilities placed in their name for the time period of February 1, to February 25, 2019. The landlord stated that they would not have incurred cost for the hydro if the tenant gave proper notice. The landlord seeks to recover the cost of the hydro they incurred in the amount of \$226.47.

The landlord testified that the tenant did not have the rental unit properly cleaned. The landlord stated there was urine on the toilet seat and the floors were dirty. The landlord stated that the unit was not left to their standard.

The tenant testified that they ended the tenancy due to the landlord's misrepresentation of the rental unit. The tenant stated that they found out the house was a previous drug house and the previous tenants were involved in a meth ring. The tenant stated that they specifically asked the landlord this question prior to moving in.

The tenant testified that there were two incidents in October 2018 directly relating to this property. On October 1, 2018, people that were associated with the previous tenant were on the property taking property at 2:00am in the morning and on October 13,

2019, they were threatened by the previous tenant's friend. Filed in evidence are text messages to the landlord.

The tenant testified that there were issues with the previous tenant and their associates, as they were robbing over 70 houses in the area including a property they own, which were their guns, and equipment totaling about \$30,000.00 were stolen. The tenant stated that they were helping the police in December 2018 and January 2019, to identify the people doing the theft. The tenant stated that these individuals knew where they were living and they had no choice, but to leave the property. The tenant stated the landlord misrepresented the property and they had the right to end the tenancy.

The tenant testified that they left the rental unit cleaned. Filed in evidence are photographs.

The landlord argued they were not renting to a meth ring and that the rental unit was not a drug house. The landlord stated they provided a clean, warm and safe environment. The landlord stated it is the tenant that is threatening and has attempted to extort them.

The landlord stated that the issue of someone attending the property occurred prior to the tenancy actually commencing as they allowed the tenant to move in earlier. The landlord stated that the previous renter had left a couple of items behind, such as a generator and they believe the previous renter had sold them and it was the person picking up the property. The landlord stated that they contacted the previous tenant and informed them very firmly that they are not to attend the property or have anyone else attend the property.

The landlord argued they have never been contact by the police prior to the tenancy commencing. The landlord argued the property was not a drug house and they are not responsible for other people or their associates. The landlord stated that the tenant had a past and any issue the tenant was experiencing was likely from that.

### 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.

**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, the parties agreed that the tenant gave notice to end the tenancy on January 16, 2019, to end the tenancy effective January 31, 2019. The evidence of the tenant was they had the right to end the tenancy as the landlord misrepresented the rental unit as it was a previous drug house.

In this case, I do not accept the tenant's evidence that the landlord misrepresented the rental unit. The tenant provided no supporting evidence, such as written correspondence between the parties prior to the tenancy agreement being signed that the prior history of the rental premise was a major factor when considering the tenancy.

Further, the tenant alleged in their testimony that the rental unit was a drug house; however, there was no evidence to support this, such as a letter from the police stating that the property was a known drug house and that the landlord was aware of this prior to the tenant entering into the contract.

I accept there was an issue with someone attending the premises, uninvited when the tenant first moved into the property; however, the tenant was only there because the landlord let the tenant move in prior to the tenancy commencing.

Further, the attendance at the property was from someone attending to pick up some of the previous tenants personal property. While I accept this was not appropriate as it was during the night, I find the landlord responded appropriately as they dealt with the issue when they were notified of incident.

Furthermore, I also find the landlord dealt with any alleged threat that may have occurred on October 13, 2018, by an associate of the previous tenant. The landlord contacted the previous tenant regarding this matter, although the landlord has no control over such incidents.

I have also reviewed the tenant's text messages filed in evidence. Although the tenant alleged a misrepresentation of the agreement in October 2018, the text messages show the landlord asked the tenant if they were ending the tenancy and informed the tenant that proper notice to end the tenancy would be required. The tenant responded "I am sorry but you are not in such a position of making such demands due to misrepresentation made about the security of the home".

I find the tenant response is unreasonable because if they believed the contract was misrepresented and the security of the home was an issue, it would have been reasonable for the tenant to end the tenancy in October 2018. However, the tenant continued to reside on the property for an additional three month and only gave short notice to end the tenancy on January 16, 2019. I find this does not support that any misrepresentation of the contract was so significant, which none was proven, that the tenant could not have provided proper notice to end the tenancy under the Act.

I also note that the text messages indicate the tenant did a criminal search on the past tenant's. Simply because the past tenant had previous charges for drug offense, does not support the landlord was aware of the charges or that these charges had anything to do with the previous tenancy. Simple because the previous tenant had past criminal charges does not support a misrepresentation of the contract by the landlord.

Additionally, the evidence of the tenant was in December 2018 and January 2019, they were assisting the police to locate the people that were involved in theft from other properties in the area, including theft from a different property that the tenant owned. The evidence of the tenant was that these people found out where they lived, and they had to vacate the premise on short notice as they did not feel safe. I find it was more likely than not that any issues the tenant was experienced was from their own actions of assisting the police, rather than from the actions of the landlord.

Based on the above, I find the tenant has not met the burden of proof to support the landlord knowingly gave false or misleading evidence when negotiating the terms of the tenancy agreement that gave the tenant the right to end the tenancy without sufficient notice.

As I have found the tenant failed to prove a misrepresentation of the rental agreement. I find the tenant was required to give the landlord proper notice to end tenancy pursuant to section 45 of the Act. I find the tenant breached the Act, when they gave notice on January 16, 2019 to end the tenancy on January 31, 2019. I find the earliest date the tenant could have legally ended the tenancy was February 28, 2019.

In this case, the landlord found a new renter for February 25, 2019. The landlord has reduced February 2019, rent as they were able to recover a portion of the rent from the new renter. I find the landlord mitigated the loss. Therefore, I find the landlord is entitled to recover loss of rent for February in the amount of **\$768.00**.

As I find the tenant breached the Act, by giving insufficient notice to end the tenancy. I find the landlord is entitled to recover the utilities from February 1, 2019, to February 25, 2019, as this was the amount the tenant would have paid under the agreement. Therefore, I find the landlord is entitled to recover the amount of **\$226.47**.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this matter, I am not satisfied that the landlord has proven that the tenant breached section 37 of the Act, as the tenant is only required to leave the rental unit reasonably clean and not to the landlord's standard. The photographs of the tenants support the rental unit was left reasonable clean.

While I accept the photographs of the landlords show very minor deficiencies; I find these are insignificant and the landlord may choose to bring the unit to a higher standard; however, the tenant is not responsible to bring the unit up to the landlord's standard. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,094.47** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$450.00** and I grant the landlord an order under section 67 of the Act for the balance due of **\$644.47**.

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.

#### Conclusion

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

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: June 12, 2019

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Residential Tenancy Branch