



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlords attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on April 18, 2019.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Further, I note the tenant filed evidence, which confirms they were aware of today’s hearing. I did not consider this evidence at each party is required to present their documentary evidence at the hearing.

The landlords appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

Are the landlords entitled to a monetary order for loss of rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on April 18, 2018. Rent in the amount of \$675.00 was payable on the first of each month. The tenant paid a security deposit of \$335.00. The tenancy ended on March 31, 2019.

The landlords claim as follows:

a.	Loss of rent for April 2018	\$ 675.00
b.	Microwave	\$ 150.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$ 925.00</b>

The landlords testified that the tenant gave notice to end the tenancy on March 21, 2019 with an effective date of March 31, 2019. The landlords stated that due to the short notice they were unable to find a new tenant until May 24, 2019. The landlords seek to recover loss of rent for April 2019, in the amount of \$675.00.

The landlords testified that the smoke alarm was going off in the rental unit and when they went down to the unit it was filled with smoke. The landlords stated that the tenant was neglectful, as the tenant had put the microwave on too long, causing food and the microwave to burn. The landlords stated that the microwave was unusable. The landlords stated that the microwave was only three months old at the time. The landlords seek to recover the cost of the microwave in the amount of \$150.00.

### 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 landlords have 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 evidence of the landlords was the tenant did not give notice until March 21, 2019 to end the tenancy on March 31, 2019. Under section 45(1) of the Act the tenant was required to provide the landlords with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was April 30, 2019.

Since the tenant failed to comply with the Act by not given the landlords sufficient notice to end the tenancy. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlords are entitled to recover loss of rent for April 2019, in the amount of **\$675.00**.

I accept the undisputed evidence of the landlords that the tenant caused damage to the microwave, when they were not monitoring the microwave and the microwave was burnt

from neglect. I find the tenant breached the Act, when they failed to repair the microwave that was damaged from their neglect. As the microwave was only three months old, I find no depreciation of the item should be applied. Therefore, I find the landlords are entitled to recover the cost to replace the microwave in the amount of **\$150.00**.

I find that the landlords have established a total monetary claim of **\$925.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$335.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$590.00**.

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.

#### Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: July 18, 2019

---

Residential Tenancy Branch