



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MNDC MNR MNSD FF  
Tenant: MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 5, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of the each other’s application, Notice of Hearing, and evidence. Neither party took issue with the service of these documents.

The Tenant clarified in the hearing that when he started renting the suite several years ago his name was different. The Tenant confirmed that he has legally changed his name (driver’s licence provided). I have ensured this decision reflects the Tenant’s current legal name.

All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

*Tenant*

- Is the Tenant entitled to 12 months compensation pursuant to section 51 of the Act?

*Landlord*

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy ended on January 1, 2019, when the Tenant vacated the rental unit. Both parties also agree that monthly rent was set at \$800.00, and was due on the first of the month. The parties also agree that the Landlord still holds a security deposit in the amount of \$375.00.

*Tenant's Application*

The Tenant stated he is looking for 12 months' rent in compensation, pursuant to section 51 of the Act, because the Landlord re-rented the rental unit, rather than move in. The Tenant stated that he was served with a Notice to End Tenancy. However, upon further clarification in the hearing, the Tenant was referring to the Mutual Agreement to End Tenancy that he signed on November 3, 2018. In this Mutual Agreement, the Tenant agreed to move out on February 15, 2019. The Tenant stated he did not receive any other Notices to End Tenancy.

The Landlord stated that he should not have to pay anything, as the Tenant signed a mutual agreement with him.

*Landlord's Application*

The Landlord is applying to recover the following items:

Rent - \$1,600.00

The Landlord stated that the Tenant only paid \$400.00 for the month of December, not the \$800.00 he was supposed to. The Landlord stated that he was expecting the Tenant to move out on February 15, 2019, as was laid out on the mutual agreement. However, he was notified on January 4, 2019, that the Tenant had already left (as of January 1, 2019). The Landlord stated that he was never given proper written notice that the Tenant would vacate before February 15, 2019, so he should be liable to pay rent for this period.

The Tenant did not dispute that he only paid \$400.00 for December 2018 rent. The Tenant stated that he was under the impression that he didn't have to pay for his last month of rent. However, he was unable to prove that this was agreed upon. The Landlord stated he never promised anything free.

Cleaning, Debris, and Damages - \$628.15

The Landlord stated that the Tenant vacated the rental unit, without notice, and left behind garbage, mattresses, and various furniture items. The Tenant stated he asked the Landlord if he could dispose of some things for him, and the Landlord responded by saying he could, but it would cost \$40.00. The Landlord stated this was never the agreement, and although he stated he could dispose of some things if the Tenant left them behind, the Tenant would be responsible for the costs. The Tenant was under the impression that it would only cost him \$40.00 but he provided no evidence to support that he made this agreement with the Landlord.

The Landlord provided a copy of the bill he paid to dispose of the items, to clean the carpets, and to repair a damaged door. The total was \$628.15. The Landlord also provided some photos showing the debris and garbage left behind and indicated the carpets were dirty and were not cleaned prior to moving out.

The Tenant did not speak to the carpet cleaning. The Tenant denied that the door was broken by him, and said he knows nothing of this. The Landlord did not have a photo of the door damage.

The Landlord provided a copy of the condition inspection report. However, the move-out portion is unsigned and largely incomplete.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

#### *Tenant's Application*

The Tenant is seeking 12 month's compensation (12 x \$800.00), pursuant to section 51 of the Act.

Although section 51 of the Act entitles the Tenant to 12 months' worth of rent in some situations, I find it important to note that this compensation is not due if an actual 2-Month Notice to End Tenancy was not issued. In this case, the parties entered into a Mutual Agreement to End Tenancy, and no 2 Month Notice was ever issued. As such, I find the Tenant is not entitled to any compensation under section 51 of the Act. The Tenant's application is dismissed, in full, without leave.

#### *Landlord's Application*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Rent - \$1,600.00

With respect to the Landlord's application to recover rent, I find the undisputed evidence shows that the Tenant only paid \$400.00 in rent for December 2018, despite monthly rent being \$800.00. I note the Tenant provided no documentary evidence showing he was entitled to any free rent, and the Landlord denies that this was ever promised. I find the Tenant owes \$400.00 in rent for December 2018.

With respect to the remainder of rent the Landlord is claiming, I note the parties entered into a mutual agreement to end tenancy which took effect February 15, 2019. The Tenant was under the impression he could move out early, without giving notice. However, it is not clear why he believes this to be the case. Given that the tenancy was set to end by way of a mutual agreement, and not a notice to end tenancy from the Landlord, the Tenant was not in a position to vacate the rental unit without giving proper notice. The Tenant simply sent a text message on January 4, 2019, saying that he moved out on January 1, 2019.

As such, I find he breached section 45 of the Act. However, I also note that the Landlord has provided zero documentary evidence and no testimony regarding how he attempted to mitigate his losses for the rest of January and early February.

I find there is insufficient evidence to show the Landlord mitigated his losses for January 1- February 15, 2019. There is no evidence that the Landlord attempted to repost the ad, and when he may have done that. Given there is no evidence to support that the Landlord mitigated his losses for this period, I dismiss this part of the Landlord's claim. The Tenant is only responsible for \$400.00 for the remainder of December's rent.

Cleaning, Debris, and Damages - \$628.15

The Landlord stated that the Tenant vacated the rental unit, without notice, and left behind garbage, mattresses, and various furniture items. Although the Tenant stated the Landlord would dispose of his things for \$40.00, he provided no evidence to support this. The evidence from the Landlord shows that he paid to dispose of the items, and now he is seeking to recover these amounts. I find the Tenant is responsible for the debris removal fees. The removal of these items are laid out on the invoice as follows:

Mattresses - \$126.11

Couch and Dresser - \$105.53

5 Tires and debris - \$100.28

Miscellaneous garbage - \$131.25

I award all of these costs, as the Tenant does not dispute that he left them behind, and the Landlord has proven what it cost him to clean up the debris.

Next, turn to the carpet cleaning. I note the Landlord stated the Tenant left the carpets dirty and did not clean them. The Tenant did not speak to this issue. I find that, based on the evidence before me, the Tenant is responsible for the carpet cleaning costs on the above invoice. This amount was listed as \$131.25 on the invoice.

With respect to the door damage, I note the Tenant directly refuted that he damaged the door. The Landlord did not provide any photos, or proof that the Tenant damaged the door. The condition inspection report, and the move-out portion of this report, was left mostly blank. As such, I find it is of limited value and I assign it no weight, as it was not completed properly. Ultimately, there is insufficient evidence to show that the Tenant caused the damage to the door. I dismiss the Landlord's claim for the costs of the door (\$75.22).

In summary, the Landlord is seeking \$628.15 for this portion of his claim. However, I decline to award the door costs. The remaining items were awarded, as laid out above, and I find the Tenant is responsible for \$552.93.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

In total, the Landlord is granted \$400.00 for December 2018 rent, plus \$552.93, plus \$100.00, totalling \$1,052.93.

I authorize the Landlord to retain the security deposit to offset what he is owed. I award the Landlord with a monetary order for \$677.93 to reflect what is still owed after he retains the deposit.

Conclusion

The Landlord is granted a monetary order in the amount of **\$677.93**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 05, 2019

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Residential Tenancy Branch