



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNDCL, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for loss of rent;
2. For a monetary order for damages to the unit;
3. To keep all or part of the security deposit; and
4. 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;
2. To recover the cost of filing the application.

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 all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have considered only the parties written or documentary evidence to which they pointed or directed me in the hearing, pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "Rules".)

### Preliminary and Procedural Issues

In this case the landlord has added KA and KC as Respondents in their application. However, KA and KC are not tenants listed in the tenancy agreement. Although these parties may have lived in the rental unit, they were occupants. Occupants have no legal

obligations under the Act. Therefore, I have removed KA and KC from the style of cause.

The parties were at a previous hearing. The tenant's application for the return of the security deposit was heard and a decision made granting the tenant the return of double the security deposit. Therefore, I will not consider the landlord's application to keep all or part of the security deposit.

#### Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?  
Is the landlord entitled to monetary compensation for damages?  
Is the tenant entitled to a monetary order for money owed?

#### Background and Evidence

The parties agreed that the tenancy began on July 15, 2012. Current rent in the amount of \$1,100.00 was payable on the first of each month. The tenancy ended on May 31, 2019.

The parties agreed a move-in and move-out condition inspection report was not completed.

#### Landlord's application

The landlord claims as follows:

|    |                            |                   |
|----|----------------------------|-------------------|
| a. | Loss of rent for June 2019 | \$1,100.00        |
| b. | Damage to carpet and walls | \$1,200.00        |
| c. | Filing fee                 | \$ 100.00         |
|    | <b>Total claimed</b>       | <b>\$2,400.00</b> |

#### Loss of rent for June 2019

The landlord testified that the tenant gave notice to end the tenancy on May 9, 2019 to end the tenancy on May 31, 2019, which was not proper notice to end the tenancy. The landlord stated they tried to find a new renter by advertising the premise on multiple websites; however, they were not able to find a new renter until July 15, 2019. The landlord seeks to recover loss of rent for June 2019, in the amount of \$1,100.00.

The tenant testified that they acknowledge that they gave the landlord short notice to end the tenancy because they had found a new rental accommodation that was suitable for their needs. The tenant stated the landlord did not notify them that this was a problem when they gave their notice to end the tenancy.

#### Damage to carpet and walls

The landlord testified that the tenant damaged the carpets as they were all wrinkled at the end of the tenancy. The landlord stated that they have not repaired the carpet but have provided an estimate for the repair. The landlord stated that the carpets were new in the year 2010. Filed in evidence are photographs of the carpet and an estimate for repair.

The landlord testified that the tenant also caused damage to the walls as there were scrapes and scratches. Filed in evidence are photographs.

The tenant testified that they did not cause any damage to the carpet. The tenant stated that the carpets were wrinkled when the tenancy started. The tenant stated that they had lived in the unit for seven years, which would have additional wear and tear.

The tenant testified that there was some minor scrapes and scratches on the walls; however, this is normal wear and tear on a tenancy of seven years. The tenant stated that they did install a television on the wall and when they removed the device it left large screw holes, which they did not repair.

#### Tenant's application

The tenant claims as follows:

|    |                      |                   |
|----|----------------------|-------------------|
| a. | Overpayment of rent  | \$1,100.00        |
| b. | Filing fee           | \$ 100.00         |
|    | <b>Total claimed</b> | <b>\$1,200.00</b> |

The tenant testified that the landlord increased the rent by \$100.00. The tenant stated that they told the landlord that the increase was illegal but paid it anyway. The tenant stated that the increase was never an issue during the tenancy.

The landlord testified that this was an agreed upon rent increase as the tenant utilities had increased.

### 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

#### Loss of rent for June 2019

**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 parties agreed that the tenant gave notice to end the tenancy on May 9, 2019, with an effective date of May 31, 2019. Under section 45(1) of

the Act the tenant was required to provide the landlord 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 June 30, 2019.

The evidence of the landlord was they advertised the rental unit on several websites; however, they were unable to find a new renter for any portion of June 2019.

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 rent for June 2019, in the amount of **\$1,100.00**.

#### Damage to carpet and walls

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 case, the landlord did not complete a move-in condition inspection report at the start of the tenancy. The tenant denied that they caused any damage that was above normal wear and tear, which the exception of the screw holes from installing a television.

As the burden of proof is on the landlord, I find without further evidence from the landlord, such as photographs at the start of the tenancy, that they have not met that burden. Therefore, I dismiss the landlord's claim for damages.

However, I am satisfied based on the evidence of the tenant that they did not repair the screw holes from when they installed a television on the wall. Therefore, I grant the landlord a nominal amount for the repair of screw holes in the amount of **\$20.00**.

I find that the landlord has established a total monetary claim of **\$1,220.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

#### Tenant's application

In this case, the tenant made a previous application which did not include a claim for overpayment of rent. The Rules state a party cannot divide a claim.

Further, the evidence of the tenant was that they knew the rent increase did not comply with the Act and agreed to pay it anyway. The evidence of the tenant was that this was not an issued during the tenancy. I find the landlord had the right to rely upon the action of the tenant that this was an agreed upon rent increase. Therefore, I dismiss this portion of the tenant's claim.

As the tenant was not successful, I decline to award the tenant the cost of the filing fee.

#### Conclusion

The landlord is granted a monetary order in the above noted amount. 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: March 18, 2020

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Residential Tenancy Branch