



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, 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, and to recover the cost of the filing fee.

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 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 retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on January 1, 2019. Rent in the amount of \$1,400.00 was payable on the first of each month. No security deposit was paid. The vacated the premise on May 17, 2020.

The landlord testified that the tenant did not pay rent for March, April and May 2020. The landlord stated that they were not too concerned at the time as they thought they had a good relationship at the time.

The landlord testified that the tenant did not give proper notice to end the tenancy as the tenant sent a text message on May 17, 2019, indicated they had vacated the rental unit. The landlord stated that because the tenant has not ended the tenancy in accordance by the Act, they should be entitled to loss of rent for June, July and August 2019.

The tenant testified that they do not deny that rent for March, April and May 2020, were not paid.

The tenant testified that they ended the tenancy on May 17, 2020 because they believe the landlord breached the Act, by not entering into a written tenancy agreement or conducting a move-in condition inspection report. The tenant stated that they also felt ignored as the landlord did not return their phone calls and text messages. The tenant stated that the landlord also called them out of the blue with a changed demeanor stated that they want to talk about the terms of the tenancy.

The tenant testified that the landlord was over installing their television and the landlord whom is three to four times their size was very aggressive stated that that they got into their business when the tenancy started and to stay out of their business. The tenant stated that they had the right to end the tenancy because they felt unsafe.

DC assisting the tenant stated that there was no written tenancy agreement and that there was no term requiring the tenant to give at least 30 days notice to end the tenancy. DC further stated that the landlord told the tenant several times that they could leave at any time.

The landlord argued at no time did they ever threaten or intimidate the tenant, and this is the first time they heard of such an allegation.

### 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.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the evidence of both parties that the tenant did not pay rent for March, April and May 2020. I find the tenant has breached section 26 of the Act. Therefore, I find landlord is entitled to recover unpaid rent in the amount of **\$4,200.00**.

While I accept the parties did not enter into a formal tenancy agreement as required by the Act; however, Section 1 of the Act defines a tenancy agreement, as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. The standard terms as defined in the regulation would apply.

I find there is no requirement for any tenancy agreement to provide a term that the tenant must give 30 days written notice to end the tenancy. This is a requirement of the Section 45 of the Act and it is the tenant's responsibility to know what their responsibilities are under the Act.

## Tenant's notice

**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 tenant did not give any notice to end the tenancy and vacated on May 17, 2019. I do not accept the tenant's evidence that they were threatened or intimidation by the landlord. This was denied by the landlord.

I have read through the tenant's text messages filed in evidence, I find there is nothing in those messages that are offensive or intimidating and there is nothing in those messages that support the tenant was afraid of the landlord, as the tenant was asking the landlord to attend the premises just prior to the tenancy ending to fix a beeping smoke detector and there were discussion of arranging to meet to pay the rent. This does not support the tenant's allegation that they were felt unsafe or feared the landlord. I find the tenant breached the Act, when they failed to give the landlord proper notice to end the tenancy.

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.

As the tenant did not give notice until May 17, 2019 when they had vacated the premise, I find the earliest date the tenant could have legally ended the tenancy was June 30, 2019. Since the tenant did not give the landlord sufficient time to mitigate the loss, I find the landlord is entitled to recover loss of rent for June 2019, as this was the earliest date the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for June 2019, in the amount of **\$1,400.00**.

However, I find the landlord is not entitled to loss of rent for July and August 2019, as the tenant was not under a fixed term tenancy. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$5,600.00** comprised of the above described amount and the \$100.00 fee paid for this application. 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 in the above stated amount.

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 30, 2020

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Residential Tenancy Branch