



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code MNR, 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/loss of rent, for an order to retain the security deposit and pet damage deposit in full satisfaction of the claim 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.

Both parties provided evidence; however, that evidence is relate to the condition of the rental unit at the end of the tenancy. That is not the issue before me. Therefore, I do not need to consider that evidence as it is irrelevant.

Furthermore, the tenant submitted evidence on January 18, 2021, (one day before the hearing) and the landlord submitted evidence on July 19, 2020 (the day of the hearing). I find neither party complied with the Residential Tenancy Branch Rules of Procedure. Therefore, I will not consider this evidence.

### 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 July 1, 2019. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenant paid a security deposit of

\$875.00 and a pet damage deposit of \$875.00 (the "Deposits"). The tenancy ended on August 31, 2020.

The parties agreed that the landlord lowered the rent on July 1, 2020 to \$1,600.00, due to the state of emergency and the tenant's ability to pay the rent. The landlord did return to the tenant the amount of \$150.00 from the Deposits, leaving a balance of those Deposits in the amount of \$1,600.00

The landlord testified that the tenant informed them by email in the middle of August 2020, that they would be vacating the premise. The landlord stated that the tenant was informed that they need notice to end tenancy in writing as required by the Act. The landlord stated they received that notice to end the tenancy on August 27, 2020 to end the tenancy on August 31, 2020.

The landlord testified that due to short notice they were unable to find a suitable tenant for September 1, 2020; however, they did find a tenant to move into the premise the last week of September 2020, and they collected the amount of \$300.00 for rent for that week.

The tenant testified that they did give short notice to the landlord; however, they advertised the unit, and they had multiple showing to find a new renter for the landlord. The tenant stated that they found two potential tenants that were able to move into the premise; however, the landlord did not approve either.

The landlord testified that the tenant was trying to find another renter; however, they only remember one and that was a young person that they meet with and found them not to be suitable as they had no history to rely upon.

### 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 tenant did not give the landlord written notice to end the tenancy, until August 27, 2020, to end the tenancy on August 31, 2020. I find the tenant breached section 45 of the Act, as they were required to give at least one months' notice. Since the notice to end the tenancy was given on August 27, 2020, the earliest date the tenant could have legally ended the tenancy was September 30, 2020.

While I accept the tenant was trying to find a new renter for the landlord to mitigate their obligations under the Act; however, the landlord has the right to determine if any potential renter is suitable, such in this case they found the potential renter to be too young and had no history of renting to be relied upon.

However, the landlord did find a new renter and they moved into the rental unit within three weeks of the tenant vacating. The landlord collected \$300.00 in rent. I find the landlord did mitigate their loss, when they found a new renter and was able to collect a portion of the rent. Therefore, I find the landlord is entitled to recover the difference between the rent payable by the tenant and the rent collected from the new renter (\$1,600.00 - \$300 = \$1,300.00) in the amount of **\$1,300.00**.

I find that the landlord has established a total monetary claim of **\$1,400.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of **\$1,400.00** from the balance of the Deposits of **\$1,600.00** in full satisfaction of the claim and remainder of the Deposits in the amount of **\$200.00**, must be returned to the tenant.

I grant the tenant a monetary order for the balance of their Deposits. This order is only enforceable if the landlord fails to return the above amount to the tenant.

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#### Conclusion

The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenant is granted a monetary order for the balance due of their Deposits.

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: January 20, 2021

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Residential Tenancy Branch