



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 19, 2021. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. However, the Tenants did not. The Landlord was provided two different orders for substituted service whereby he was granted permission to serve the Tenants electronically. More specifically, the Landlord was granted permission to serve, A.H., by text message with the Notice of Hearing and evidence. The Landlord stated he sent the Notice of Hearing and all evidence to A.H. on November 19, 2020, via text message to the phone number indicated. Pursuant to that decision and substituted service order, I find A.H. is deemed served with the Notice of Hearing and evidence on November 22, 2020, 3 days after it was sent.

The Landlord was also given permission to serve the other Tenant, S.M., via email. The Landlord sent a copy of the Notice of Hearing and all evidence to S.M. via the email address indicated on November 5, 2020. I find S.M. is deemed served with the Notice of Hearing and evidence on November 8, 2020.

I find the Landlord sufficiently served both Tenants with all required documents, and evidence for the purposes of this proceeding.

The Landlord was 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 relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and utilities or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security and pet deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord stated that monthly rent was set at \$1,100.00 and was due on the first of the month. The Landlord stated that he collected, and still holds, a security deposit in the amount of \$550.00. The Landlord stated that the Tenants were on a month-to-month tenancy, and around September 16, 2020, the Tenants informed the Landlord, via text message that they would be moving out, soon, and possibly by the end of the month.

The Landlord stated that he tried to schedule a move-out inspection with the Tenants on September 30, 2020, as this when they thought they would be out by. However, the Landlord indicated that the Tenants told him to wait, as they were not sure when the movers would be able to come. The Landlord attended the rental unit on September 30, 2020, after the Tenants sent an abrupt text message saying they were moving out right away, but by the time the Landlord got to the rental unit, the Tenants were gone, and the unit was abandoned.

The Landlord stated that the Tenants purposefully misled him to avoid having to do a move-out inspection. The Landlord stated that the Tenants informed him that they would come back and do the cleaning, in order to avoid paying a cleaner. However, the Tenants did not follow through. The Landlord stated that he gave the Tenants a chance to fix the mess they left behind, but they stopped responding to him. The Landlord reposted the ad for the rental unit on October 15, 2020, but he was unable to re-rent the unit by the end of the month. The Landlord is seeking \$1,100.00 for rent for October, as the Tenants failed to give proper written notice, which left him without income for that month.

The Landlord provided photos he took on September 30, 2020, which show that the unit was not properly cleaned before the Tenants left. The Landlord stated he hired a

cleaner for 4.5 hours, which cost \$90.00 total. The Landlord is seeking this amount as well.

### Analysis

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

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the Landlord's application for October rent. A tenancy may only end in one of the following ways:

### ***How a tenancy ends***

**44** (1) *A tenancy ends only if one or more of the following applies:*

*(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*

- (i) section 45 [tenant's notice];*
- (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*

*(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*

*(c) the landlord and tenant agree in writing to end the tenancy;*

*(d) the tenant vacates or abandons the rental unit;*

*(e) the tenancy agreement is frustrated;*

*(f) the director orders that the tenancy is ended;*

*(g) the tenancy agreement is a sublease agreement.*

I note the Tenant sent a text message to the Landlord on or around September 16, 2020, stating they would be moving around the end of September 2020. The Landlord acknowledged receiving it this same day. However, I find this notice from the Tenants violated section 45(1) of the Act which states as follows:

**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.*

***Incorrect effective dates automatically changed***

**53** (1) *If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

*(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*

I find the corrected effective date of the Notice given by the Tenants is October 31, 2020. However, I find the tenancy ended on September 30, 2020, which is the day they abandoned and vacated the rental unit, pursuant to section 44(1)(d).

In any event, the Tenant breached the Act by failing to give at least one-month notice prior to vacating. As such, I find the Tenant is liable for October 2020 rent. I note the Landlord is expected to mitigate lost rent, by attempting to re-rent the unit as soon as possible. In this case, I accept that the Tenants were very unclear with respect to whether or not they would be returning to clean up the mess they left behind. The Landlord stated that the Tenants told him they would be back after the moved but this did not happen. I find the lack of clarity from the Tenants, combined with their very short notice, made it difficult to mitigate losses for October. I note the Landlord reposted the unit for rent around October 15, 2020, but he was unable to recover the rent for that month. In any event, I find the Landlord sufficiently mitigated his losses, given the circumstances, and I find he is entitled to recover October rent, in full, \$1,100.00.

Next, I turn to the Landlord's request for compensation to cover the costs incurred to clean the rental unit after the Tenants left. I accept the undisputed testimony and photographic evidence which shows the rental unit was not left in a reasonably clean state.

Residential Tenancy Policy Guideline #1 states the following:

*The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit*

I find the amounts sought by the Landlord for cleaning costs are reasonable, and I award the full amount they paid to have the unit cleaned for 4.5 hours, \$90.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Lost Rent	\$1,100.00
Cleaning Costs	\$90.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$1,290.00
LESS: Security Deposit	\$550.00
<b>Total Amount</b>	<b>\$740.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$740.00**, as specified above. This order must be served on the Tenants. If the Tenants fail 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: February 19, 2021

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Residential Tenancy Branch