



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNSD, MNR, MNL, FF

### Introduction

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

The landlord's application filed on June 24, 2022, is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the rental 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 filed on June 6, 2022, is seeking orders as follows:

1. For compensation because my tenancy ended as a result of a two, four- or 12-Month Notice to end tenancy;
2. For monetary compensation for other money owed; and
3. To recover the cost of filing the application.

The tenant's second application filed on July 5, 2022, is seeking orders as follows:

1. For the return of the security deposit; and
2. To recover the cost of the 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 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.

### Preliminary Issue

The parties agreed that the tenancy ended based on the tenant receiving a One Month Notice to End Tenancy for Cause, (the "Notice") issued on May 13, 2022. The tenant did not dispute the Notice and vacated before the effective date within the Notice. I find the tenant cannot apply for compensation pursuant to section 51 of the Act, as no such notice to end tenancy was received. Further, as the tenancy legally ended in accordance with section 47 of the Act, the landlord is not responsible to pay for the tenant's moving fee. Based on the above, I dismiss this portion of the tenant's claim without leave to reapply.

### Issue(s) to be Decided

Is the tenant entitled to compensation for other money owed?

Is the landlord entitled to a monetary order to recover prorated unpaid rent?

Is the landlord entitled to a monetary order to cleaning and damages?

Is either party entitled to the security deposit?

### Background and Evidence

The tenancy began on October 15, 2021. Rent in the amount of \$5,200.00 was payable on the first of each month. A security deposit of \$2,600.00 was paid by the tenant. The parties agreed that the tenant vacated the property on June 6, 2022, after they received the Notice.

### Tenant's application

The tenant testified that when they moved into the premises the landlord gave them permission to paint a wall. The tenant stated the landlord did not agree to pay for cost. The tenant stated that they would like reimbursement of \$500.00. The tenant stated they do not have proof of the cost.

The tenant testified that when they moved into the premises the landlord gave them permission to install a power charger for their electric vehicle. The tenant stated that the landlord did not agree that they would pay for the installation; however, they would like the landlord to reimburse them \$350.00.

The landlord's agent testified that the landlord did give the tenant permission to paint and install a power charger for their electric vehicle; however, the landlord never agree to pay for these costs as they were for the sole benefit of the tenant.

#### Landlord's application

The landlord's agent testified that the tenant did not pay any rent for June 2022. The agent stated that the landlord seeks to recover prorated rent from June 1 to June 5, 2022, in the amount of \$867.00.

The landlord's agent testified that the lock was not working correctly at the end of the tenancy and had to be replace. The agent stated they have no knowledge of the age of the lock. The landlord seeks to recover the cost of \$230.00.

The landlord's agent testified that the tenant did not have the carpets shampooed at the end of the tenancy and they had a pet. The landlord seeks to recover the amount of \$150.00. The landlord's agent testified that the rental unit also had to be cleaned. The landlord seeks to recover \$350.00.

The landlord's agent testified that the repairs were needed to the wall, door and flooring. The agent stated that a move-in condition inspection was not done, and they were not the property manager at the beginning of the tenancy. The landlord seeks to recover the amount of \$2,038.47.

The tenant testified that the landlord agreed that if they moved out before the effective date in the Notice that they would not have to pay prorated rent. The tenant stated that the landlord's previous property manager was involved in the conversation with the landlord.

The tenant testified that the lock was working on the day they vacated the property, and they did not cause any damage.

The tenant testified that they did not clean the carpets at the end of the tenancy because when they moved into the premises the carpets were dirty and there had been a cat living there. The tenant stated the landlord's property manager at the start of the tenancy said that because of this they would not be responsible for cleaning at the end of the tenancy.

The tenant testified that further the landlord did not pay for the cleaning cost, it was by billed and paid by the previous property manager as that was their agreement.

The tenant testified that they did not cause damage to the rental unit.

### 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.

### Tenant's application

In this case, the landlord agreed to allow the tenant to paint and install a power charger for their personal vehicle at the start of the tenancy. This was for the sole benefit of the tenant. I find there was no agreement that the landlord would pay for these costs. Therefore, I dismiss the tenant's application.

### Landlord's application

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.***

...

In this case the tenant was living in the rental unit from June 1 to 5, 2022. The evidence of the tenant was that there was an agreement if they vacated early, that they would not have to pay the rent for the five days. The landlord's property manager states that there was no such agreement, and the previous property manager was not employed by the landlord.

As the tenant is obligated by the Act to pay rent when due, I find the onus is on the tenant to prove they had an agreement with the landlord that they were not be required to pay the rent. I find there is insufficient evidence to support the tenant's version. Therefore, I find the landlord is entitled to recover prorated rent for five days in the amount of **\$867.00**.

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.

I am not satisfied that the tenant caused damage to the door lock by their actions or neglect. The landlord's agent could not provide the age of the lock and it is more likely than the not, that if the door lock was not property working if was from reasonable use and the aging process. Further, it is the landlord's responsible to make repairs and maintain the premises. This would include locks that are malfunctioning Therefore, I dismiss this portion of the landlord's claim.

I am not satisfied that the landlord suffered a loss for cleaning. The evidence of the tenant was the carpet was not cleaned when they moved into the rental unit and that the property manager at that time said they would not be responsible for cleaning them at the end of the tenancy. Further, the evidence of the tenant was the landlord did not pay the cost as it was paid by the previous property manager. The landlord has provided a invoice for cleaning; however, it is not in the landlord's name. Rather, it was in the name of the prior property manager, who was not acting for the landlord at the time. Leading me to believe the tenant's version. The landlord provided no proof of payment. Therefore, I dismiss the landlord's claim for cost of cleaning.

I am not satisfied that the landlord has proven the tenant caused damage to the rental unit. The landlord did not complete a move-in condition inspection report with the tenant, nor did the landlord provide any photographs of the condition of the rental unit at the start of the tenancy for my consideration. I find the landlord has failed to provide sufficient evidence to prove the damage was caused the action or neglect of the tenant. Therefore, I dismiss the landlords claim for damages.

I find that the landlord has established a total monetary claim of **\$987.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of **\$987.00** from the security deposit of **\$2,600.00**, in full satisfaction of the claim. I grant the tenant an order under section 67 of the Act for the balance due of their security deposit of **\$1,613.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

I did not grant the tenant the cost of the filing fee as the tenant's application filed on June 6, 2022, was without merit, and dismissed. I have not granted the tenant the cost of filing fee their second application of July 5, 2022, because the landlord had already made a claim against the security deposit.

### Conclusion

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

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 17, 2023

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Residential Tenancy Branch