



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNR, MND, 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, for damages to the unit, for an order to retain the security deposit in partial 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.

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 monetary compensation for damages?

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, 2015. Current rent in the amount of \$1,524.00 was payable on the first of each month. The tenant paid a security deposit of \$667.50 and a pet damage deposit of \$667.50. The tenancy ended on June 1, 2022, almost seven years after it commenced.

The landlord claims as follows:

a.	Damages and furniture removal	\$2,100.00
b.	Unpaid rent for June 2022	\$1,524.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$3,724.00</b>

### Damages

At the outset of the hearing the tenant stated that they are not dispute the cost for removal and disposal cost of their belonging in the amount claimed of \$434.81

The landlord testified that there were holes in the bedroom wall as it looked, they had been punched or kicked. The landlord stated that it cost \$130.00 to fix.

The landlord testified they are not proceeding with the bathroom repair.

The landlord testified that the screen door had to be replaced and they paid \$199.22. The landlord did not provide a photograph of the screen door or proof of payment.

The landlord testified that the bedroom door and frame were cracked and scratches by the tenant's dog.

The landlord testified they are no longer claiming the cost of painting; however, seek to recover the cost of \$50.00 as they had to fill and patch holes.

The tenant testified that the holes in the bedroom wall were from when their pervious partner broken into the rental unit and assaulted them. The tenant stated that the police were called; however, they did not notify the landlord of the damage. The tenant stated that they filled the holes the best they could.

The tenant testified that they do not agree they caused damage to the screen door, the tenant stated that the door was old and rusty.

The tenant testified that they do not agree that the bedroom door and frame were carked and scratched. The tenant stated the photographs they received the baseboards had been removed and premises appears to be undergoing a renovation.

The tenant testified that they would agree that the landlord can keep \$50.00 for minor repairs to the walls.

### Unpaid rent

The landlord testified that the tenant did not end the tenancy in accordance with the Act, as they gave notice to end the tenancy on May 2, 2022, with a vacancy date of June 1, 2022. The landlord stated they did not advertise the rental unit because of the condition of the rental unit. As the tenant left furniture, damage had to be repaired, and they needed to paint the rental unit.

The tenant testified that in March 2022 the landlord suggested to them that they should move because they wanted to renovate the rental unit and because they had received complaints. The tenant stated that they even told the landlord that they had found alternative living accommodation for June 1, 2022, which they were proved as a reference. The tenant stated that they did give the landlord notice on May 2, 2022 to end the tenancy on June 1, 2022.

The tenant testified that they did not leave the rental unit in a stated that it was unrentable. The tenant stated that they lived in the rental unit for seven years and over that time period the landlord had only been to the rental unit on 3 occasions.

The landlord responded that they did not know when the tenant was going to be leaving until they received the tenants notice to end tenancy.

### 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 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

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.

### Damages

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.

At the outset of the hearing the tenant agreed that they are responsible for the removal and disposal of furniture. I find the tenant breached the Act when they failed to remove their possession from the rental unit. Therefore, I find the landlord is entitled to recover **\$434.81.**

The tenant agreed to the landlord keeping \$50.00 which was the amount claimed by the landlord for plastering repairs. Therefore, I find the landlord is entitled to keep **\$50.00.**

I am not satisfied that the landlord has proved the balance of their claim for damages. I landlord has not submitted any photographs of the rental unit, except for showing the piano and other items in the back of a truck, although I note the tenant made reference to a photograph that was not before me.

The landlord did not provide a move-in or move- out condition inspection report to prove the condition of the rental at the start of the tenancy or at the end of the tenancy. Therefore, I dismiss the balance of the landlord's damages claim.

### Unpaid rent

**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 evidence of both parties was the tenant did not give notice until May 2, 2022 to end the tenancy on June 1, 2022. 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.

While I accept the landlord may have wanted the tenant to vacate; however, I have no evidence that leads me to believe the landlord was waiving the required notice under the Act. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was June 30, 2022.

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.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, I am not satisfied that the landlord minimized the loss. The landlord did not advertise the rental unit for rent when they became aware the tenant was vacating. While I accept the tenant left furniture in the rental unit and had to be dispose; however, I have no evidence that the rental unit was left in such a condition that it was unrentable for the entire month of June 2022. I find it more likely than not that landlord took the

opportunity to repaint the rental unit and make improvements which might have been long overdue.

As I have found the tenant breached the Act, when they failed to give proper notice under the Act, and when they left furniture and other items in the rental, I find it appropriate to grant the landlord half the rent for June 2022, as this is a reasonable amount of time to remove the furniture and make necessary repairs that were caused by the tenant. Therefore, I grant the landlord the amount of **\$762.00**.

I find that the landlord has established a total monetary claim of **\$1,346.81** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$667.50** and pet damage deposit of **\$667.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$11.81**.

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 and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 06, 2023

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Residential Tenancy Branch