



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNSDS-DR MNRL, MNDCL, FFL**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- An order for the landlord to return the security deposit pursuant to section 38.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The parties attended.

Each party acknowledged receipt of the other's Application for Dispute Resolution and evidence.

Further to the evidence submitted, I find each party served the other in compliance with the Act.

*Preliminary Issue*

The Tenant withdrew his claim which is accordingly dismissed without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for outstanding rent and damages?

Background and Evidence

*Overview*

The Landlord claimed compensation for outstanding rent and loss of one month's rental income as the Tenant denied access to his unit for viewing of prospective occupants.

The Tenant denied the Landlord's claim and requested the claim be dismissed without leave to reapply.

*Tenancy*

The parties agreed as follows. The 4-month fixed term tenancy ended on August 31, 2023. Rent was \$880.00. The unit was a room with a common area shared with other occupants who were not the Landlord.

The Tenant testified he paid the Landlord \$440.00 cash for the security deposit. The Landlord denied receiving any security deposit.

The Landlord claimed the following:

ITEM	AMOUNT
Outstanding rent	\$80.00
Loss of one month's rent	\$880.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,060.00</b>

*Outstanding rent*

The parties agreed the Tenant did not pay the Landlord \$80.00 owing for rent one of the months during the tenancy. The Tenant stated the parties agreed to the rent reduction because the unit was filthy. The Tenant submitted supporting photographs.

The Landlord denied the Tenant's evidence. The Landlord did not submit documentary evidence of demands for payment.

#### *Loss of one month's rent*

The Landlord claimed the Tenant did not cooperate to show the unit during the final month of the tenancy. The Tenant had changed the lock on his unit and the Landlord could not get entry. Accordingly, the Landlord could not locate suitable replacement tenants for the month of August 2023 and claimed loss of rental income of \$880.00 caused by the Tenant's actions.

The Landlord submitted copies of handwritten notices of entry dated August 10, 2023 for the following day which she put under the Tenant's door.

The Landlord stated she advertised the unit as soon as the Tenant moved out but did not submit any other evidence of mitigation.

The Tenant acknowledged changing the lock on his unit because of theft by another occupant of the building and not providing a copy of the key to the Landlord. The Tenant denied that the Landlord had given proper notice of any proposed entry, as the effective service was three days after posting.

In any event, the Tenant stated he was cooperative with the Landlord in her efforts to find a new occupant before the tenancy ended. To accommodate the Landlord, he left his door open during the day. The unit was available for showing and the Landlord showed it to prospective occupants. He is not responsible for the Landlord's failure to find a new occupant. The Landlord failed to take adequate steps to find a new Tenant.

#### *Condition inspection Reports*

The landlord did not produce condition inspection reports. The Tenant stated he left the unit clean and sent a notice of forwarding address to the Landlord, expecting it to be returned.

#### Analysis

I do not reference all the evidence. I refer to only relevant, admissible evidence and key facts in support of my findings.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

### *Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.

### *Credibility*

I find the Landlord has failed to meet the burden of proof on a balance of probabilities with respect to the claims.

I find the Tenant has provided an equally probable but different explanation of events which contradicts the Landlord's narrative. The Tenant provided a plausible explanation for paying \$80.00 less rent for one month and for cooperating with the Landlord's showing of the unit.

I find the Landlord's version of events to be inadequately supported by documentary evidence in the face of the Tenant's believable denial of the narrative.

#### *Landlord's Claims*

I find the landlord has failed to meet the burden of proof on a balance of probabilities.

The landlord has not established the first step of the 4-part test, that is, that the Tenant failed to comply with the Act, regulations, or the tenancy agreement. As a result of failure to meet this test, the Landlord's claims fail.

Accordingly, the landlord's claims are dismissed without leave to reapply.

As the Landlord has not been successful, I do not award reimbursement of the filing fee.

#### Conclusion

The landlord's claims are dismissed without leave to reapply.

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: October 10, 2024

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Residential Tenancy Branch