



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for loss of rent, for compensation under the Act and the tenancy agreement, for damage repair and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 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.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on or about April 1, 2013. The parties entered into a form of a tenancy agreement, which may also be the application form the Landlord uses for prospective renters. The rent was set at \$895.00 per month, payable on the first day of the month and the Tenant paid the Landlord a security deposit of \$450.00.

The Agents for the Landlord testified that the Tenant had paid his rent for June 2014 late, and included a Notice to End Tenancy to the Landlord to end the tenancy at the end of June 2014. The Agents testified they received the cheque for June rent and the Tenant's Notice to End Tenancy on June 5, 2014, through the mail.

The Agents testified that the Tenant works in a remote location and would often send them his rent cheques in the mail. They allege the Tenant was often late paying rent.

The Agents alleged that the Tenant allowed his son to live at the rental unit for periods of time and this caused problems as the Tenant's son created noise disturbances.

The Agents testified that following receipt of the Tenant's Notice to End Tenancy, they tried to contact the Tenant to obtain permission to enter the rental unit to show it to prospective renters. They testified the Tenant did not answer the Landlord's phone calls and did not respond to the voice messages they left. The Agents testified that they had a promising prospective renter, but since they did not receive the permission from the Tenant to enter the rental unit they lost this prospective renter. (I note that during the course of the hearing the Agents were advised of section 29 of the Act, which governs the Landlord's ability to enter the rental unit.)

The Landlord submits that they started advertising the rental unit on June 11, 2014, although no copies of advertising were submitted in evidence.

The Landlord alleges that the Tenant did not vacate the rental unit before 1:00 pm on June 30, 2014, and alleges that the Tenant did not vacate the rental unit until July 2, 2014. In the particulars of the Application the Landlord writes, "The Tenant over stayed beyond 1pm last day and left the suite incomplete." [Reproduced as written.]

The Landlord claims **\$895.00** for loss of rent for the month of July 2014.

The Landlord claims that the Tenant failed to properly clean the kitchen stove top and oven, and did not clean the cabinet handles or window blinds. The Landlord claims **\$62.50** for cleaning the stove, oven and cabinets, and **\$32.50** for cleaning five sets of blinds. Copies of the invoices for these charges were submitted in evidence by the Landlord.

The Landlord further alleges that the Tenant damaged a set of blinds in the rental unit and claims **\$82.61** for replacing and installing the blinds. A copy of the receipts for replacement blinds and the installation were submitted in evidence.

In reply to the Landlord's claims, the Tenant testified that when he moved into the rental unit he did not sign any paperwork and the Landlord did not perform an incoming condition inspection report.

The Tenant testified that the blinds were broken when he moved into the rental unit and it was not very clean. The Tenant testified that he left the rental unit in better condition than it was when he moved into it. He testified that when he moved in the stove was dirty and there was an oily film on things in the kitchen.

The Tenant explained he works in a different location than that of the rental unit and allowed his son to stay at the rental unit a few times. The Tenant testified that he got many abusive phone calls from the Agents for the Landlord regarding his son, so he stopped answering or replying to the Agents.

The Tenant testified that he sent the Landlord his June 2014 rent cheque and his Notice to End Tenancy on May 25 or 26, 2014. He testified that he asked the Landlord to keep the envelope he sent the rent and notice in, as the envelope had the date of mailing on it. The Tenant testified that he vacated the rental unit on June 29 and had all his possessions out by then and had cleaned the rental unit.

The Tenant alleged that the Landlord had his Notice to End the Tenancy in ample time to rent for July 2014.

The Tenant alleged that several months before the end of the tenancy, one of the Agents for the Landlord entered the rental unit illegally and made a phone call from the rental unit. The Tenant alleged that the Agents were abusive and harassed him.

In final submissions the Agents testified that they do not have the envelope that the Tenant mailed to them. They repeated the Tenant was often late paying rent and alleged that there were some months he did not pay the rent at all. They allege they spent many hours trying to contact the Tenant.

The Tenant concluded saying he left the rental unit in better shape than when he moved in and that he had sent the mail to the Landlord with ample time.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

In regard to testimony and evidence, 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Landlord has insufficient evidence to prove the Tenant failed to provide them with adequate Notice to end the tenancy, or that the Tenant damaged the blinds in the rental unit or that he left the rental unit unreasonably dirty. Therefore, I dismiss the entire Application of the Landlord without leave to reapply.

As described above, where a party has one version of events and the other party has an equally probable version of events, the party with the burden of proof has not met the onus to prove their claims.

In this instance, the Landlord might have provided a copy of the Notice to End Tenancy given by the Tenant, or as the Tenant suggested, a copy of the envelope showing when it was mailed. As described in the damages test above, the Landlord had the onus to prove that the Tenant breached the *Act* by failing to give the required one month Notice

to End Tenancy. I find the Landlord had insufficient evidence to establish they received the Notice late, or that the Tenant left the rental unit on July 2, 2014.

As to the damages and cleaning claims, I find that by failing to perform an incoming or an outgoing condition inspection report in accordance with the Act the Landlord extinguished the right to claim against the security deposit for damages or cleaning, pursuant to sections 24(2) and 36(2) of the Act.

The condition inspection report is used to establish the condition of the rental unit at the start of the tenancy and then compare it with the condition at the end of the tenancy. It is a statutory requirement on the Landlord to perform these, under sections 23 and 35 of the Act. The regulation to the Act contains standard terms that the form used by any landlord must contain. Here the Landlord had no written condition inspection report in evidence, and therefore, they extinguished the right to claim against the deposit.

Even if the Landlord had performed these inspections, I find they had insufficient evidence (such as photographs of the stove or blinds), to establish the condition it was in when the Tenant left. I find that it is just as likely that the blinds were damaged at the outset of the tenancy and that the Tenant left the rental unit reasonably clean, as required under section 37 of the Act.

For these reasons I find that the Landlord's Application must be dismissed without leave to reapply.

As the Application of the Landlord against the security deposit has been dismissed without leave to reapply, I must order the Landlord to return the security deposit to the Tenant pursuant to sections 38 and 67 of the Act and Policy Guideline 17.

Therefore, I grant the Tenant a monetary order for return of the security deposit in the amount of **\$450.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

I find the Landlord had insufficient evidence to prove the Tenant breached the Act by failing to give the required Notice to End Tenancy.

I further find that the Landlord has extinguished the right to claim against the deposit for damages and cleaning due to the failure to perform condition inspection reports, pursuant to sections 24(2) and 36(2) of the Act.

In any event, the Landlord failed to provide sufficient evidence to prove the Tenant damaged the blinds or did not clean the rental unit to a reasonable standard.

As the Landlord's claims have been dismissed, I have ordered the Landlord to return the security deposit to the Tenant, and issued the Tenant a monetary order which may be enforced through the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 10, 2014

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Residential Tenancy Branch