



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OPC MND MNDC MNR MNSD FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent, damage and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the teleconference scheduled for 11:30 am continued until 12:00 pm. The landlord, his assistant and the property manager attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, and to make submissions. The property manager testified that the landlord's Application for Dispute Resolution and the evidentiary materials submitted by the landlord were served to the tenant by registered mail on December 24, 2015 and January 11, 2016 respectively. Canada Post tracking numbers were submitted for both mailings. The property manager testified that the tenant had vacated the rental unit on January 4, 2016. Based on all of the evidence provided on behalf of the landlord, I find that the tenant was deemed served with the landlord's application for dispute resolution package on December 29, 2015 (5 days after its registered mailing) but that he had vacated the residence when the evidentiary package was sent to the rental unit. Therefore, while I accept that the tenant was aware of this hearing, I will only consider evidentiary materials served to the tenant prior to January 4, 2016.

The landlord indicated that, since the tenant had vacated the rental unit, he no longer required an order of possession and withdrew that portion of his application. His

assistant indicated that further receipts for repair to damage in the unit had been submitted to the residential tenancy branch. I note, again, that those materials were not sufficiently served to the tenant. Furthermore, the landlord sought to rely on those receipts to raise the amount of his monetary claim. The landlord made no formal application for an amendment and sent no notice of this new amount to the tenant. Therefore, I will not consider any amendment to the amount sought by the landlord.

As a final preliminary matter, I note that a second tenant was named as a party to the landlord's application. However, the residential tenancy agreement that I have been provided does not include the second individual's name. Therefore, I will not consider her a party to this claim.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage and/or loss as a result of this tenancy?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit to satisfy any monetary order?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy began on May 1, 2014 with a rental amount of \$675.00 payable on the first of each month. The property manager testified that the tenant vacated the rental unit on January 4, 2016. The landlord testified that he continues to hold the \$337.50 security deposit paid by the tenant at the outset of this tenancy. The property manager testified that the tenant did not provide a forwarding address when he vacated the rental unit. She also testified that she attempted to contact the tenant regarding move-out matters by text but the only response she received was that he was not interested in talking to her.

The property manager testified that the tenant left the rental unit in horrible condition. She testified that, during the course of the tenancy the tenant was 'written up' numerous times for disruptive behaviour within the residence. She testified that he regularly acted loud and aggressive, disturbing other tenants.

The property manager and the landlord both testified with respect to the damage left behind by the tenant. The property testified that she believed much of the damage was intentional. She testified that several rotting fish were left on the carpet of the rental unit. She testified that there were 2-3 hole marks (from punching) in the walls of the rental

unit. The landlord indicated that the tenant was witnessed damaging the lighting at the entranceway. The landlord and property manager testified that the tenant stripped the closure mechanism on the fire door near his rental unit by pushing it open very hard. The landlord submitted photographic evidence illustrating damage to the doors, carpet and unit generally.

The landlord testified that the building with this rental unit is approximately 34 years old. He also testified that he has records of carpet replacement for this unit in 2005, 10 years ago. He testified that the rental unit was painted prior to the tenant moving in: he stated that each unit is painted before each tenancy.

The landlord submitted invoices documenting the work done to repair the rental unit totalling \$ 4286.00. He and his property manager both testified that the unit has been advertised for rent for approximately one week and that it should be ready for occupation by the first week of February, one week after this hearing. The landlord claims for rental loss for February 2016 and also testified that the tenant had not paid rent in January 2016. The landlord claims a total of \$1350.00 in rental arrears and rental loss. The landlord's total monetary claim at hearing was \$5636.00 plus recovery of the \$50.00 filing fee for this application.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has submitted evidence of damage to the rental unit at the end of this tenancy. The landlord has submitted invoices to document the monetary amount lost as a result of the damage. The landlord has provided testimony that the tenant did not pay January rent and that the unit will not be re-rented until mid-February or later. The inability to rent sooner is as a result of the extensive damage to the rental unit. Given that the landlord has quantified his loss and submitted proof of the amounts and that the tenant is undoubtedly liable for the damage, the rental arrears and some loss of rent, I find that the landlord is entitled to recover \$5686.00. As the landlord was

successful in this application, I find the landlord is entitled to the \$50.00 filing fee which has been included in this amount.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

The landlord withdrew his application for an Order of Possession.

I issue the landlord a monetary order in the amount of \$5686.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 2, 2016

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Residential Tenancy Branch

