



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent, cause and breach of an agreement pursuant to section 55;
- a monetary order for a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The tenant appeared. The landlord appeared. The tenant elected to call one witness to testify. No issues of service were raised by the parties.

### Preliminary Issue – Scope of Application

This application was originally scheduled to be heard 12 January 2016. At that time there were issues with service of the landlord's application and the tenant indicated that he wished to file his own application seeking compensation for loss of value in the tenancy. I adjourned the application. In an interim decision dated 12 January 2016, I specifically set out that the tenant was permitted to file a cross application. The tenant did not file cross application.

The tenant vacated the rental unit on or about 23 November 2015. On this basis, the landlord's claim for possession of the rental unit is moot. The landlord does not seek any other remedy other than monetary compensation from the tenant.

The hearing proceeded on the following issues:

- a monetary order for a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 landlord's filing fee for this application from the tenant pursuant to section 72.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage to the rental unit or to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 2015. The tenancy ended 23 November 2015. Monthly rent of \$1,500.00 was due on the first. There was no condition inspection report created at the beginning of the tenancy. While a written tenancy agreement was prepared for this tenancy, ultimately the parties did not execute any agreement.

#### *Landlord's Evidence*

The landlord testified that LS had been living in the landlord's home since June 2014. The landlord testified that on or about 1 May 2015, the tenant and LS began residing in the rental unit. The landlord submits that the tenancy agreement is with the tenant, and not with LS.

The landlord testified that he does not hold a security deposit in respect of this tenancy. The landlord seeks collection of a security deposit in the amount of \$750.00.

The landlord testified that he only received \$750.00 from the tenant for October's rent. On 31 October 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The 10 Day Notice set out an effective date of 15 November 2015. The landlord testified that he was not aware of any reason that would entitle the tenant to deduct any amount from rent. The landlord seeks payment of October's rent arrears.

The landlord also issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). This 1 Month Notice was issued to both the tenant and LS.

I was provided with a mutual end to tenancy document dated 15 October 2015. The document refers to both LS and the tenant as "tenants". The document is signed by the landlord, but not the tenant. The agreement sets out that the tenant agreed to vacate by 1 December 2015 and that rent for November will be prorated in the event the tenant vacated earlier than 1 December 2015. The landlord considers that the tenancy ended under the mutual agreement to end tenancy. The landlord seeks \$1,150 for the tenant's use and occupation of the rental unit for 1 to 23 November 2015.

The landlord seeks compensation for the tenant's use of the garage as a storage area. The landlord admitted that occupants of the basement suite also stored belongings in the garage. The landlord testified that he permitted the tenant to store some belongings there; however, the agreement was to remove the belongings when renovations to the garage began. The landlord submits that he is entitled to \$150.00 per month for each of the five months the tenant stored his belongings in the garage.

The landlord testified that the tenants caused damage to the interior and exterior walls. The landlord testified that the interior walls sustained drywall damage that had to be mudded and sanded. The landlord testified that the rental unit was freshly painted six months prior to the tenancy beginning. The landlord denies that the damage to the exterior of the rental unit occurred prior to the tenancy beginning. The landlord provided me with a quote for repairs. The quote is in the amount of \$350.00. The quote is for all of the repairs.

The landlord testifies that the tenant left belongings behind including a bike, a pair of boots and a barbecue. The landlord testified that the tenant left the fridge full. I was provided with a photograph of the fridge. The fridge contains condiments, vodka, produce, milk, and eggs. The landlord admitted that he did not inspect the interior of the fridge at the beginning of the tenancy. The landlord testified that it took two hours to remove the belongings as the dump is forty minutes away from the rental unit.

The landlord provided an invoice for his labour. The landlord has invoiced his time for removing the debris at an hourly rate of \$50.00. The invoice also includes amounts for costs and disbursements totalling \$2,295.48.

The landlord admitted on cross examination that the rental unit was unclean when the tenancy began. The landlord admitted on cross examination that he received \$750.00 from LS on or about 9 May 2015. The landlord admitted on cross examination that the majority of the belongings in the garage were LS's.

The landlord claims for \$6,295.48:

<b>Item</b>	<b>Amount</b>
Payment of Security Deposit	\$750.00
October Rent	750.00
November Rent	1,150.00
Garage Storage	750.00
Repairs	350.00
Garbage Removal	250.00
Costs and Disbursements	2,295.48
<b>Total Monetary Order Sought</b>	<b>\$6,295.48</b>

### *Tenant's Evidence*

LS testified that he began occupying the rental unit with the tenant on or about 1 May 2015. LS testified that prior to moving in with the tenant, LS had been living with the landlord since November 2014.

The tenant testified that he received the tenancy agreement but did not sign it and misplaced it. The tenant submitted that he and LS were joint tenants under the tenancy agreement. The tenant testified that LS paid a security deposit to the landlord on 9 May 2015. The tenant testified that he made payments for rent directly to the landlord.

LS testified that he provided \$750.00 as a deposit to the landlord on or about 8 May 2015. LS testified that prior to this transfer he had not paid the landlord any amount. LS testified that he told the landlord that this amount was for a security deposit. LS agreed that there was discussion with the landlord as to whether or not this amount should be compensation for LS's prior residence, but that these discussions occurred after the amount had been transferred to the landlord.

LS testified that at the beginning of the tenancy, there were still some belongings left by the previous occupants and that the rental unit had not been cleaned. The tenant testified that the prior occupants left items in the fridge. LS testified that he could not recall whether or not there were items left in the fridge.

The tenant agreed that only \$750.00 was contributed to October's rent and that nothing was paid for November.

The tenant testified that ongoing construction resulted in disturbance and dust in the rental unit. The tenant testified that he asked the landlord to reduce the rent to compensate for the construction. The tenant testified that there were interruptions to the heat in the rental unit. The tenant testified that he and LS felt entitled to withhold amounts from rent as compensation for the deficiencies.

The tenant testified that on or about 10 July 2015 he put up a partition between the area under construction and the rental unit. The tenant admitted that when he removed the partition the drywall peeled off with the tape. LS confirmed that drywall damage occurred when the temporary partition was removed.

The tenant testified that he did not store belongings in the garage area. The tenant testified that the items belonged to LS or other occupants. The tenant testified that he did not know his bike was there. LS testified that he believed that the garage area was provided as part of the tenancy agreement. LS testified that he had belongings in the garage prior to the tenancy beginning that stayed there when he moved into the rental unit.

The tenant testified that the marks on the exterior of the rental unit were done prior to move in. LS testified that the tire marks on the exterior wall were there prior to the tenancy beginning. LS admitted that the interior marks could have been caused by tire marks.

### Analysis

The landlord seeks payment of a security deposit.

The landlord submits that the tenant was the only tenant under the tenancy agreement and that LS was an occupant. The tenant submits that he was a joint tenant under the tenancy agreement with LS. At all material times the landlord knew that LS was living with the tenant and contributing to rent. Further the landlord issued the 1 Month Notice and the mutual agreement to vacate to the tenant and to LS.

I find that the tenancy agreement was between the tenant and LS (as joint tenants) and the landlord. As joint tenants LS and the tenant were jointly benefitted under the agreement and shared joint and several liability under the tenancy agreement.

The landlord admits that he received \$750.00 from LS in May 2015. The landlord denies that this amount was a security deposit and says that it was compensation for LS staying with the landlord in his home prior to this tenancy beginning. The tenant testified that the amount was a security deposit amount. LS testified that the amount was a security deposit amount although admits that the landlord brought up applying this amount as compensation for LS staying in the landlord's home after the transfer. On balance, I find that it is more likely than not that the amount was provided as a security deposit. In particular, this amount was exactly one half a month's rent (the customary amount of a security deposit) and was provided at the beginning of LS and the tenant's occupation of the rental unit. I find that the tenant has paid a security deposit in the amount of \$750.00. Even if this amount had not been paid, paragraph 20(a) of the Act prohibits the collection of a security deposit at any time other than when a tenancy agreement is entered into.

The landlord's claim to collect a security deposit is dismissed.

The landlord seeks payment of rent arrears for October (\$750.00) and a prorated portion of rent for November (\$1,150.00). The tenant admits that these amounts were not paid.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Under the tenancy agreement the tenant owed rent in the amount of \$1,500.00 on the first of the month.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations. The tenant was not permitted to unilaterally deduct amounts from rent for perceived deficiencies. The proper procedure would be for the tenant to file for dispute resolution to claim compensation for the value by which the tenancy was devalued.

On the basis of section 26 of the Act, the tenant is responsible for \$750.00 for the remainder of October's rent. The landlord agreed that the tenant could pay a prorated portion of rent for November. On this basis, the tenant is responsible for \$1,150.00 for November's use and occupancy of the rental unit.

The landlord claims for compensation for the tenant's use of the garage for storage. The landlord admits that the belongings were mostly LS's. The tenant testified that the majority of the belongings there were LS's and had been stored there prior to the tenancy beginning. LS confirmed this. The tenant admitted that the bicycle was his and testified that he was not aware that it was in the garage.

I find that the belongings in the garage were LS's and were stored there prior to the tenancy beginning. On this basis, I find that the items in the garage were stored there not as part of the

tenancy, but as part of the preexisting relationship between LS and the landlord. Those items cannot form part of this application as the tenant was not a party to that arrangement. With respect to the bicycle, this is a trifling transgression. I find that such a *de minimus* violation is not compensable under the Act. The landlord is not entitled to compensation for the tenant's use of the garage for storage.

The landlord claims the cost of repairs to the exterior wall (tire mark) as well as the interior walls (tire marks and tape damage). The tenant admits that he caused the damage to the interior walls of the rental unit; however the tenant denies causing the damage to the exterior wall. LS confirmed this testimony.

There was no condition inspection conducted at the beginning of this tenancy. By failing to document the condition at the beginning of the tenancy in a report the landlord has denied himself the best evidence of the condition of the rental unit at the beginning of the tenancy.

Overall I found the tenant and LS to be credible in their testimony: They were forthright and made admissions that were adverse to their interests where the truth required it. On the other hand, the landlord omitted relevant facts that were contrary to his interests, for example, that the belongings in the garage were LS's and there prior to the tenancy beginning or that LS had paid \$750.00. Admissions regarding these facts were only elicited by way of cross examination and showed a tendency by the landlord to be less than forthcoming. For this reason, I prefer the evidence of the tenant and LS regarding the exterior wall damage. I find that the damage was caused prior to this tenancy beginning. On this basis the landlord is not entitled to claim for compensation for the repair from the tenant.

The tenant admits that he caused the damage to the interior walls of the rental unit. Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. By failing to repair the damage prior to vacating, the tenant breached subsection 37(2) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord provided a quote for the repairs. The quote does not apportion the materials or labour between the exterior damage and the interior damage. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal

damages. Based on this, I award the landlord nominal damages of \$175.00 for the tenant's failure to leave the interior walls undamaged.

The landlord claims for the cost of removing items from the rental unit.

Section 37 requires a tenant to leave a unit reasonably clean. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" sets out the responsibility for garbage removal from a rental unit:

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The tenant and LS testified that the fridge contained items at the beginning of the tenancy. The landlord admits that he did not inspect the inside of the fridge at the beginning of the tenancy. I accept that there were some belongings left by the prior occupants of the rental unit; however the photograph of the fridge provided shows perishable belongings that were most likely acquired by the tenant over the course of the tenancy. The tenant was responsible for removing these as well as his personal belongings. I find that by failing to remove these belongings, the tenant violated section 37 of the Act.

The landlord provided an invoice for his own labour and fees for removing the items. The landlord charged an hourly rate of \$50.00. The landlord did not provide any estimates from removal services to show that this is a reasonable hourly rate for removing the belongings. The landlord did not provide a receipt from the municipal garbage depot for the fee of \$50.00. On this basis, I find that the landlord has failed to substantiate the amount of his loss and that he mitigated his loss. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the landlord nominal damages of \$50.00 for the tenant's failure to remove his personal items from the rental unit.

The landlord has claimed amounts for his costs and disbursements.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding recovery of costs and disbursements are provided for in court proceedings, they are specifically not provided for under the Act. I conclude that this exclusion is intentional.

I find that the landlord is not entitled to compensation for the landlord's disbursement and costs as they are not compensable under the Act.

The landlord applied to recover his filing fee paid in respect of this application from the tenant.

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been



successful in its application. As the landlord filed a claim for more than \$5,000.00, he paid a filing fee in the amount of \$100.00. For a claim less than \$5,000.00 the filing fee would have been \$50.00. The landlord's total compensation awarded was \$2,125.00. On this basis, I am exercising my discretion to award the landlord \$50.00 recovery of his filing fee.

The landlord continues to hold the tenant's security deposit in the amount of \$750.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,425.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid October Rent	\$750.00
Unpaid November Rent	1,150.00
Repairs	175.00
Garbage Removal	50.00
Offset Security Deposit Amount	-750.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,425.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 04, 2016

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**Residential Tenancy Branch**