



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNDC, FF

### 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 and breach of an agreement pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1114 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's application was filed 11 May 2016. The agent testified that he personally served the tenant with the dispute resolution package on 13 May 2016. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

### Preliminary Issue – Amendment to Landlord's Application

The landlord's application sets out the same address for the tenant and landlord. As opposing parties residing at the same address may indicate a jurisdictional issue, I inquired of the agent whether or not the parties shared a kitchen or bathroom. The agent informed me that the tenant occupied a self-contained basement suite. The agent asked to amend the landlord's application to reflect that the tenant occupied the basement. As there is no undue prejudice to the tenant in permitting this amendment, it is allowed.

### Preliminary Issue – Mootness

At the hearing, the agent informed me that the tenant vacated the rental unit on or about 1 June 2016.

As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the landlord's application for an order of possession as that issue is moot. For this reason, I decline to consider the landlord's application for order of possession for unpaid rent and breach of an agreement pursuant to section 55.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? 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 the testimony of the agent, 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 30 March 2015. The parties entered into a fixed-term tenancy agreement for a period ending 30 April 2016. Monthly rent in the amount of \$1,000.00 was due on the first. The tenant was also responsible for paying one third of the utilities. The landlord continues to hold the tenant's security deposit in the amount of \$500.00, which was collected at the beginning of the tenancy.

The agent testified that at the end of the fixed term the tenant was offered another tenancy agreement with an increased rent in the amount of \$1,150.00. The tenant did not agree to this amount and did not sign the successive, fixed-term tenancy agreement.

The tenant did not vacate the rental unit at the end of the fixed term and vacated on or about 1 June 2016. The tenant contributed \$1,000.00 towards his use and occupancy of the rental unit for May. The landlord seeks payment of the \$150.00 difference between the tenant's payment and the rent amount set out in the new tenancy agreement.

The landlord seeks payment of utilities in the amount of \$256.00. I was not provided with any itemized breakdown of this amount. I was not provided with any invoices to substantiate this amount. The agent testified that the utility invoices were provided to the tenant and that these invoices are for sewer and water charges.

The landlord claims \$100.00 for cleaning and \$100.00 for carpet cleaning. The agent testified that these were estimates based on observing the rental unit prior to the tenant vacating the rental unit. The agent testified that the actual cost will be much more because the tenant smoked in the rental unit.

The landlord claims for \$706.00:

Item	Amount
Unpaid Rent May	\$150.00
Unpaid Utilities	256.00
Carpet Cleaning	100.00
Cleaning	100.00
Filing Fee	100.00
<b>Total Monetary Order Sought</b>	<b>\$706.00</b>

### Analysis

The Act permits an arbitrator to order a wrongdoer to pay compensation to a 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 claims for the difference between the amount the tenant paid towards his use and occupancy of the rental unit (\$1,000.00) and the amount to which the landlord attempted to increase rent (\$1,150.00) using successive, fixed-term tenancies. The tenant did not agree to the increased rent amount by signing the second, fixed-term tenancy and vacated the rental unit. The tenant overheld the rental unit for a period of one month.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In this case, I find that the appropriate compensation for the tenant's overholding is \$1,000.00, the amount of rent due under the 2015 tenancy agreement. The tenant specifically refused to sign the tenancy agreement increasing the rent to \$1,150.00.

The landlord has not provided any corroborating evidence that indicates the market value of the rental unit was \$1,150.00 such as a new tenancy agreement indicating the agreed to rent amount. On this basis, the landlord's claim for \$150.00 is dismissed as the landlord has provided insufficient evidence to substantiate the claimed amount.

The landlord claims for the cost of sewer and water invoices. The agent testified that the outstanding amount is \$256.00; however, the landlord failed to provide any invoices to substantiate this amount.

The landlord has failed to provide invoices to substantiate the utilities amount and has provided only oral testimony as to the amount. Oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: The best evidence available should be provided.

On the basis that the landlord failed to provide invoices to substantiate the utilities amount, I find that the landlord has failed to meet her burden in showing the existence of the damage or loss. The landlord is not entitled to recover the utilities amount and this portion of her claim is dismissed.

The landlord claims for the estimated costs of cleaning the rental unit (carpet and general cleaning). This constitutes a claim for compensation for breach of subsection 37(2) of the Act, which governs the condition in which a tenant must leave a rental unit at the end of tenancy.

The tenancy ended 1 June 2016. This is when the landlord's claim for cleaning costs crystallised. As the landlord could have not known in what state the rental unit would be left until that time. The landlord made her application on 11 May 2016 and the hearing of this application occurred on 9 June 2016. As such, at the time of the application the landlord's claim had not yet crystallised. For this reason, I dismiss the landlord's claim for cleaning on the basis that it is premature. The landlord is at liberty to reapply.

As the landlord has not been successful on the merits of this application, she is not entitled to recover her filing fee paid from the tenant.

### Conclusion

I decline to consider the landlord's application for possession as the issue is moot.

The landlord's claim for for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

The landlord's claim for cleaning costs is dismissed with leave to reapply as the claims were premature.

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: July 11, 2016

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Residential Tenancy Branch