



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes MNDC

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Issue – Landlord's evidence package

The landlord submitted a 39 page evidence package to the Residential Tenancy Branch by fax on December 5, 2016. However, the landlord acknowledged that this evidence package was not served on the tenant in accordance with the Act and was therefore not admitted as evidence in the hearing.

### Issues

Is the tenant entitled to a monetary order for damage or loss?

### Background & Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all the details of the submissions and/or arguments are reproduced here.

The rental unit was an apartment in a subsidized housing complex. The tenancy began on September 2, 2016 and ended on September 5, 2016. The subsidized monthly rent was \$750.00 payable on the 1<sup>st</sup> day of each month and the tenant paid a security deposit of \$375.00 at the start of the tenancy.

The tenant is claiming reimbursement for \$200.00 in cleaning fees and \$800.00 as compensation for loss suffered for moving in and out of the rental unit. The tenant testified that the rental unit was clean as promised when she moved in. The tenant testified the place was extremely dirty, there was writing on the walls, drug paraphernalia was found in the rental unit, the bathtub was unusable, and the back sliding door did not lock leaving the unit unsecure. The tenant submits that her children were covered in flea bites leaving her no alternative but to move out of the rental unit which she described as being in an unlivable condition.

The landlord's witness testified that she initially had a conversation with the tenant at the end of August during which she advised the tenant that the landlord had a unit (unit #15) but it would not be available until September 15, 2016. The tenant stated that this would not be a problem.

The landlord testified that he was then contacted by the tenant on August 30, 2016 and she requested to move in sooner. The tenant was advised that another unit (unit# 17) would be available sooner but it would require cleaning and some renovations. The tenant stated that this would not be a problem. The tenant pleaded with the landlord to make this unit available as early as September 2, 2016 and the landlord reluctantly agreed. The landlord agreed that the unit required repairs and that the repairs would be completed after the tenant moved in. The landlord also agreed to reimburse the tenant \$200.00 for arranging her own cleaning for the unit.

The landlord submits that the unit was relatively clean when they performed the move-out inspection with the previous tenant on September 2, 2016. The landlord testified that required repairs were noted on the move-out inspection and a work order was written up for these repairs which included a complete bathroom renovation. The landlord testified that a walk thru inspection was also completed with the tenant on September 3, 2016 and the tenant was aware of and advised of the repair work that was needed. On September 4, 2016, after being advised by the tenant that her children had been bitten by cat fleas, the landlord purchased and delivered a flea treatment spray to the tenant.

The landlord testified that he and the tenant then had a discussion during which the landlord offered the tenant an opportunity to move into unit #15 as per the original plan to which the tenant agreed. The landlord testified that the tenant moved out the next after leaving a note for the landlord stating she was not coming back.

The landlord returned the tenants rent paid for the month of September and damage deposit.

The landlord submits that the tenant has not provided any evidence of the alleged drug paraphernalia found in the rental unit or any evidence of the alleged flea bites. The landlord submits that although the bathroom needed some repair work it was clean and usable. The landlord submits that the latch on the back sliding door required repair but the door was secured with a board.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant did not provide any pictures or receipts which would have supported her claim with respect to the condition of the rental unit and the alleged loss incurred for moving expenses. I find the tenant has not provided sufficient evidence to support her claim that the rental unit was not suitable for occupation. I accept the landlord's testimony that the tenant was made aware of certain repairs that were required and

that the landlord had a plan in place to complete these repairs. Accordingly, I find that any loss suffered by the tenant was not a result of the actions or neglect of the landlord in violation of the Act. I accept the landlord's testimony that this unit was made available to the tenant on short notice at the tenant's own request.

The tenant's application is dismissed without leave to reapply with the exception of the \$200.00 the landlord agreed to pay to the tenant for cleaning costs.

The tenant is granted a monetary order in the amount of \$200.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$200.00. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 13, 2016

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Residential Tenancy Branch