



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, MNR, MND

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the “Act”).

On October 18, 2017, the Tenant filed an Application for a monetary order for damage or loss; to cancel a 1 Month Notice To End Tenancy For Cause; and for the return of a security deposit.

On December 11, 2017, the Landlord filed an Application requesting a monetary order to recover unpaid rent and /or utilities; for compensation for damage, and to keep the security deposit.

The matter was set as a teleconference hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. Both participants in the hearing 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.

### Preliminary and Procedural Matters

The parties testified that the Tenant moved out of the rental unit on October 30, 2017. The Tenant's request to cancel a notice to end tenancy is not required and is dismissed.

### Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for damage?
- Is the Landlord entitled to keep the security deposit in satisfaction of his claims?
- Is the Tenant entitled to compensation for damage or loss?

### Background and Evidence

The Parties testified that the tenancy began in April 2013 2017, as a month to month tenancy. Rent in the amount of \$765.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$362.00.

### Tenant's Claims

The Tenant testified that she found an alternate residence to rent starting October 1, 2017, but it was too late to provide the Landlord the full months' notice to end her tenancy as required under the *Act*. The Tenant asked the Landlord to sign a mutual agreement to end the tenancy, but the Landlord did not wish to sign the agreement.

The Tenant testified that she came home to find an eviction notice. She testified that the notice was unfair and shocking to her. She submitted that the Landlord was being malicious.

The Tenant is seeking compensation of \$765.00 for the actions of the Landlord.

In reply, the Landlord submitted that the notice to end tenancy was issued to the Tenant due to repeated late payment of rent; smoking; and damage to the unit.

### Security Deposit

The Tenant testified that she provided the Landlord with her forwarding address on November 29, 2017, after the final inspection of the rental unit.

On December 11, 2017, the Landlord made application for dispute resolution seeking to keep the security deposit.

## Landlord's Claims

### Loss of Rent

The Landlord is seeking compensation in the amount of \$765.00 due to a loss of rent for the month of December 2017.

The Landlord submitted that the Tenant disputed the notice to end tenancy rather than accepting it and moving out. The Landlord testified that since the notice was in dispute, he could not prepare to rent the unit out for December 2017. He submitted that the tenant contacted him on November 27, 2017, and asked for a move out inspection.

The Landlord testified that he did not rent the unit out or receive any rent for the month of December 2017.

The Tenant testified that she moved out on October 30, 2017, and did not sleep in the unit thereafter. She testified that she paid November 2017 rent. She testified that she turned the keys to the unit over to the Landlord on November 29, 2017.

### Damage

The Landlord is seeking \$427.35 for damage to a kitchen counter-top. The Landlord testified that there was no damage to the counter top when the Tenant moved in.

The Landlord had the counter-top laminate replaced and has provided a photograph of the damage and a copy of the receipt. The Landlord testified that the counter top people told him the top could not be repaired.

In reply, the Tenant testified that she did not neglect the countertop. She testified that approximately one year ago she opened the door directly below the countertop and the top of the door caught on the lip of the countertop and broke a chip of laminate off. She testified that it is an old countertop. She submitted that the company told her it could be glued back on.

### Analysis

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

Section 7 of the Act states,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

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

### Landlord's Claims

#### Loss of Rent

I find that the Tenant is responsible to compensate the Landlord for a loss of rent for December 2017. The Tenant disputed the 1 Month Notice which prevented the Landlord from re-renting the unit to another Tenant. In addition the Tenant requested a final inspection of the unit in late November 2017. While the tenancy officially ended at the end of November, 2017, the Landlord was not provided sufficient notice that Tenant was choosing to move out and he was not able to re-rent the unit to a new tenant.

I award the Landlord compensation in the amount of \$765.00 for a loss of December 2017 rent.

#### Damage

The Landlord's claim for the replacement of the counter top is dismissed. After considering the location of the damage, the age of the counter, and the explanation from

the Tenant, I find that it is more likely than not that the damage is not attributable to neglect by the Tenant.

### Tenant's Claims

The Tenant's claim for compensation is dismissed. A Landlord has the right to serve a notice to end tenancy. The Tenant disputed the 1 Month Notice, but moved out of the unit prior to the hearing to determine whether or not the Landlord had cause to end the tenancy. I find that the Landlord has not breached the Act, and the Tenant is not entitled to compensation.

### Security Deposit

I find that the Landlord applied to keep the security deposit within 15 days of receiving the Tenant's forwarding address. The security deposit of \$362.00 will be applied towards the monetary award granted to the Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim of \$865.00 for a loss of rent for December 2017, and the filing fee. After setting off the security deposit of \$362.00 towards the award of \$865.00, I find that the Landlord is entitled to a monetary order in the amount of \$503.00.

### Conclusion

The Tenant failed to end the tenancy in accordance with the *Act*, and the Landlord suffered a loss of rent. The Landlord is granted \$765.00 for loss of rent and \$100.00 for the filing fee.

The Landlord is authorized to keep the security deposit of \$362.00 and is granted a monetary order in the amount of \$503.00

The Tenants claim for compensation of \$765.00 is dismissed without leave to reapply.

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: January 15, 2018