



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S FFL  
                                 MT CNR LRE MNDCT FFT

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order limiting or setting conditions on the landlord's right to enter the rental unit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The tenant and the landlord attended the hearing, and the tenant gave affirmed testimony. Two other people assisted the landlord, one who introduced himself as the landlord's agent but did not testify and did not take part in the hearing, but observed only. The landlord also had the assistance of a person introduced as a translator for the landlord however the translator gave affirmed testimony on behalf of the landlord.

The parties were given the opportunity to question each other and discuss settlement.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that he vacated the rental unit on February 28, 2018 but has not yet returned the keys to the landlord, and agrees to do so today. The tenant withdrew all claims except the claims for monetary compensation and to recover the filing fee from the landlord. The tenant also agreed that the landlord should have an Order of Possession effective immediately, and I so order.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord's translator** testified that this month-to-month tenancy began on November 1, 2017 although the tenant actually moved in earlier. Rent in the amount of \$1,650.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio style apartment in a condominium complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified through the translator that the tenant did not pay all of the rent owed for December, 2017 and has not paid any rent for January or February, 2018. The landlord claims \$863.50 for December's rent, \$1,650.00 for each of January and February as well as a pro-rated per diem amount for March, 2018 to today because the landlord was not aware that the tenant has vacated the rental unit until this hearing.

The landlord also seeks payment of hydro and Wi-Fi usage and copies of bills have been provided as evidence for this hearing. Numerous emails were exchanged between the parties, and an Addendum to the tenancy agreement contains initials by the tenant stating that the tenant will pay the hydro and TELUS bills each month. The tenant used the Wi-Fi and was supposed to pay for it until the landlord cancelled the account.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$535.23 for a dryer not in the contract;
- \$328.27 for an oven and 2 cook tops unauthorized;
- \$238.57 for towing;
- \$95.20 for internet October 24 to November 23;
- \$97.10 for internet November 24 to December 23;

- \$99.05 for internet December 24 to January 23;
- \$23.09 for home phone October 24 to November 23;
- \$29.03 for home phone November 24 to December 23;
- \$29.61 for home phone December 24 to January 23; and
- \$66.73 for hydro October 28 to December 1.

Another hydro bill in the amount of \$64.39 has been received since the landlord's application was made, and the landlord claims \$131.12 for hydro. The landlord does not claim that the tenant should pay the \$535.23 for a dryer not in the contract; or \$328.27 for an oven and 2 cook tops unauthorized; but disputes those claims made by the tenant. The translator also testified on behalf of the landlord that the landlord is willing to cover the cost of curtains, hot plate, dryer and toaster oven but they must remain in the rental unit.

The landlord's claim totals \$1,541.88 in addition to the unpaid rent and recovery of the \$100.00 filing fee for the cost of this application.

**The tenant** testified that he signed the contract and hired movers, but the strata advised the tenant that he had to book the elevator and pay a move-in fee. The landlord reimbursed the \$200.00 move-in fee, but the tenant had to put his belongings back into storage until the strata rules were met.

The landlord sent emails to the tenant commencing with October 23, 2017 wherein the landlord advised that she had cancelled the hydro and Wi-Fi. The tenant disputes owing the landlord for those services and testified that he never used Wi-Fi.

The parties had agreed that the tenant purchase a stove and dryer and rent for December was reduced for that amount, then the landlord disagreed. The tenant had also asked for a second set of keys but the landlord refused and told the tenant no one else was permitted to stay in the rental unit.

On December 17, 2017 the landlord sent the tenant another email saying that the tenant had 30 days to move out because the landlord intended to move back in. However, the landlord's agent sent a new tenancy agreement to the tenant to sign showing a fixed term tenancy for a year. The tenant signed and returned it but did not receive a copy back signed by the landlord.

Copies of numerous emails and text messages exchanged between the parties or representatives of the landlord have been provided as evidence for this hearing.

The tenant has also provided copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities served by the landlord. The first is dated January 2, 2018 with an expected date of

vacancy of January 15, 2018 for unpaid rent in the amount of \$863.50 that was due on November 28, 2017. The second is also dated January 2, 2018 with an expected date of vacancy of January 15, 2018 for unpaid rent in the amount of \$1,650.00 that was due on December 28, 2017. The third one is dated February 4, 2018 with an expected date of vacancy of February 15, 2018 for unpaid rent in the amount of \$1,650.00 that was due on February 1, 2017.

The tenant testified that the landlord should pay for the strata fees and moving expenses due to the short notice to move out. The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$560.00 for a moving fee;
- \$200.00 for a strata fee;
- \$950.00 for missed work;
- \$68.04 for purchasing a hot plate;
- \$259.77 for purchasing a toaster oven;
- \$300.00 for purchasing a dryer;
- \$281.02 for purchasing curtains;
- \$111.19 for purchasing pots and pans;
- \$837.50 for a security deposit paid to another landlord;
- \$31.00 for courier fees;
- \$215.82 for miscellaneous items purchased;
- \$825.00 for recovery of the security deposit; and
- \$800.00 for a knap sack and briefcase.

The tenant's total claim is \$5,438.99, and receipts have been provided as evidence for this hearing.

### Analysis

With respect to the landlord's claim, the *Residential Tenancy Act* states that a tenant must pay rent when it is due whether or not the landlord has complied with the *Act* or the Tenancy Agreement. The tenant does not dispute that rent hasn't been paid, and I am satisfied that the landlord is owed rent for the month of December, 2017 in the amount of \$863.50 and \$1,650.00 for each of the months of January and February, 2018. I also accept the undisputed testimony of the landlord that the landlord has not been made aware that the tenant has vacated the rental unit, and the tenant agreed that he has not returned the keys. The landlord claims a per-diem amount for March to the date of this hearing, March 6, 2018 and I find that the landlord is entitled to \$319.35.

The Addendum to the tenancy agreement clearly requires the tenant to pay for the TELUS and hydro bills each month, and I am satisfied that the landlord has established the following claims:

- \$95.20 for internet October 24 to November 23;
- \$97.10 for internet November 24 to December 23;
- \$99.05 for internet December 24 to January 23;
- \$23.09 for home phone October 24 to November 23;
- \$29.03 for home phone November 24 to December 23;
- \$29.61 for home phone December 24 to January 23; and
- \$66.73 for hydro October 28 to December 1.

I am not satisfied that the towing charge claimed by the landlord is a matter that falls within the jurisdiction of the *Residential Tenancy Act*, and I dismiss that portion of the landlord's claim.

With respect to the tenant's monetary claim, where a landlord chooses to end a tenancy so that the landlord may move into the rental unit, the landlord is required to give the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property and must provide the tenant with the equivalent of one month's rent as compensation. However, the tenant is not entitled to compensation if the landlord has not served the Two Month Notice to End Tenancy for Landlord's Use of Property. In this case, the landlord did not serve such a notice, but served several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. Where such a notice is issued, the tenant has 5 days to pay the rent in full or dispute the notice, and if the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit. The landlord has no obligation to provide the tenant with moving expenses or compensation, and I dismiss the tenant's applications for moving expenses and strata fees.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I am not satisfied that the tenant has established that any loss of wages was a result of the landlord's failure to comply with the *Act* or the tenancy agreement, nor the amount of any such loss. Therefore, I dismiss the tenant's application for loss of wages.

The landlord has agreed to the following claims made by the tenant:

- \$68.04 for purchasing a hot plate;
- \$259.77 for purchasing a toaster oven;
- \$300.00 for purchasing a dryer; and
- \$281.02 for purchasing curtains.

I am not satisfied that the tenant has established that the landlord ought to pay for pots and pans, miscellaneous items or a knap sack or brief case, and I dismiss those claims.

The tenant's claim of \$837.50 is for a security deposit paid to another landlord, and I find that the tenant should make that claim against the landlord he paid it to.

The *Residential Tenancy Act* provides for recovery of a filing fee, but not fees related to serving documents or preparation for a dispute resolution hearing, and therefore, I dismiss the tenant's claim for courier fees.

The parties agree that the landlord currently holds a security deposit in the amount of \$825.00 which the landlord has applied to keep. Having found that the landlord is owed **\$4,987.05** and the tenant is owed **\$1,733.83** including the \$825.00 security deposit, I set off those amounts and I grant a monetary order in favour of the landlord for the difference in the amount of **\$3,253.22**, calculated as follows:

| DESCRIPTION                        | PARTY    | AMOUNT     |
|------------------------------------|----------|------------|
| December, 2017 Rent                | Landlord | \$863.50   |
| January, 2018 Rent                 | Landlord | \$1,650.00 |
| February, 2018 Rent                | Landlord | \$1,650.00 |
| Pro-rated Rent for March, 2018     | Landlord | \$319.35   |
| internet October 24 to November 23 | Landlord | \$95.20    |

|                                       |                   |                   |
|---------------------------------------|-------------------|-------------------|
| internet November 24 to December 23   | Landlord          | \$97.10           |
| internet December 24 to January 23    | Landlord          | \$99.05           |
| home phone October 24 to November 23  | Landlord          | \$23.09           |
| home phone November 24 to December 23 | Landlord          | \$29.03           |
| Home phone December 24 to January 23  | Landlord          | \$29.61           |
| Hydro                                 | Landlord          | \$131.12          |
|                                       | <b>TOTAL</b>      | <b>\$4,987.05</b> |
| Hot plate                             | Tenant            | \$68.04           |
| Toaster Oven                          | Tenant            | \$259.77          |
| Dryer                                 | Tenant            | \$300.00          |
| Curtains                              | Tenant            | \$281.02          |
| Security Deposit                      | Tenant            | \$825.00          |
|                                       | <b>TOTAL</b>      | <b>\$1,733.83</b> |
|                                       | <b>DIFFERENCE</b> | <b>\$3,253.22</b> |

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlord effective immediately and I order the tenant to return the keys that give access to the rental unit immediately.

I further order the landlord to keep the \$825.00 security deposit and I grant a monetary order in favour of the landlord in the amount of **\$3,253.22**.

This order is final and binding and may be enforced.

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: March 08, 2018

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Residential Tenancy Branch