



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY CENTRAL HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      FF MNDC MND

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing, with the tenant calling witness G.F. to the hearing. Both parties were given a full opportunity to be heard, to present their testimony and to make submissions.

### Preliminary Issue – Service of Evidence

Following opening remarks the landlord confirmed receipt of the tenant's evidentiary package by way of Canada Post Registered Mail, while the tenant said that he had only received the landlord's application for dispute, and not the landlord's evidentiary package. The landlord said that he sent his evidentiary package by way of Canada Post ordinary mail to the tenant's workplace. Section 88 of the *Act* notes:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) **by sending a copy by ordinary mail or registered mail to the address at which the person resides or**, if the person is a landlord, to the address at which the person carries on business as a landlord;

**(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;**

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

**(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or**, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

I find that the landlord has failed to serve the tenant with the evidence in a manner prescribed by the *Act* and will therefore only consider the landlord's oral testimony.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

#### Background and Evidence

Undisputed testimony presented by the tenant explained that this tenancy began on March 18, 2016. Rent was \$1,600.00 and an \$800.00 security deposit was collected at the outset of the tenancy. This was a fixed-term tenancy with the tenant scheduled to move out on February 28, 2017.

The tenant explained that his last day in occupation of the rental unit was November 29, 2017 after having given the landlord notice on shortly prior to that date, that he would be vacating the property for December 2017.

The landlord is seeking a monetary award of \$2,000.00 along with a return of the filing fee. The landlord said that the tenant broke their fixed term tenancy and that he therefore suffered a loss of rent for December 2017. The landlord's monetary application reflects \$1,600.00 in lost rent for December 2017, along with cleaning fees of \$400.00 that he said he incurred following the conclusion of the tenancy. The landlord

said that the property while clean, was not “fully clean” and required a “deep clean.” The landlord testified that immediately upon receipt of the tenant’s notice he placed advertisements online with Craigslist and Kijiji and was able to secure a new tenant for December 15, 2017.

The tenant questioned the efforts that the landlord undertook to re-rent the suite and argued that a large amount of cleaning was done in the rental unit following the conclusion of the tenancy. The tenant’s witness spoke to the fact that several days of cleaning were completed following the tenant’s move out and stated that the home was “20% cleaner than move-in.” The tenant noted during his tenancy that no condition inspection report was completed by the parties at the start of the tenancy and that a condition inspection report was only completed at the conclusion of the tenancy.

### Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

After considering the oral testimony of both the landlord and tenant, and the tenant’s admission that he understood the notice date was “wrong” I find little evidence was presented at the hearing that written notice was provided to the landlord which clearly explained that the tenant intended to vacate the premises before the date on which his tenancy was to end. While I understand the tenant’s confusion with the various laws in a country to which he had recently arrived, I must consider the landlord’s rights in light of the *Act*. As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord’s testimony that he made *reasonable* efforts to re-rent the unit as quickly as possible (by posting it immediately on two local websites). While I accept that a breach has occurred and that compensation is due, I find that the landlord did not suffer loss of

rent for the entire month of December 2017. The landlord explained that a new tenant was in place for December 15, 2017 and that this tenant paid \$750.00 for their time in occupation of the unit in December 2017. I will therefore award the landlord a monetary award of \$850.00 for the unpaid rent of December 1 to 15, 2017.

The second portion of the landlord's application concerns a monetary award of \$400.00 related to cleaning that the landlord said was required in the unit following the tenant's move out.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a monetary award.

After considering the testimony of both parties and reviewing the evidence submitted by the tenant, I find that the landlord has failed to provide sufficient detail related to his claim. The landlord did not perform a condition inspection of the unit prior to the tenant's move in and did not provide an invoice or detailed breakdown of the cleaning services required. Furthermore, even if I were to consider them, the photos submitted by the landlord were undated and contained no description of what they purported to depict. Section 37(2)(a) of the *Act* states, "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear." I accept the testimony of the tenant and his witness that they left the rental unit in a *reasonable* condition following the conclusion of the tenancy.

For these reasons, I dismiss this portion of the landlord's application.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenant.

If he has not already done so, the landlord is directed to return the tenant's security deposit. Pursuant to section 38(5), the landlord has lost his a right to retain all or a portion of the tenant's security deposit. This section reads as follows:

The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

### Conclusion

I issue a Monetary Order of \$950.00 in favour of the landlord. This amount includes a return of the \$100.00 filing fee along with \$850.00 for partial unpaid rent for December 2017.

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: June 25, 2018

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Residential Tenancy Branch