



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL-S MNDL-S MNRL-S MNSD MNDCT

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A monetary order for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, present sworn testimony and make submissions. Both parties were assisted by their own interpreters.

As both parties were in attendance I confirmed service of documents. The parties each confirmed they were in receipt of the other's respective applications for dispute resolution and evidentiary materials. I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

This tenancy began in May, 2017. The monthly rent was \$1,250.00 payable on the first of each month. The rental unit experienced plumbing issues during the summer of 2017 when the tenant was out of the country. The tenancy ended in September, 2017.

There was a previous hearing under the file numbers on the first page of this decision. At that hearing the parties sought monetary awards for damages and loss as well as disposition of the security deposit for the tenancy.

The landlord now claims a monetary award in the amount of \$21,411.28 for the following items:

<b>Item</b>	<b>Amount</b>
Damages	\$18,806.28
Carpet Cleaning Fee	\$105.00
Unpaid Rent	\$2,500.00
<b>TOTAL</b>	<b>\$21,411.28</b>

The carpet cleaning fee and the unpaid rent were sought in the earlier hearing. The landlord claims the damages as the cost of repairs for water damage to the rental unit. The landlord references a Leasing Act, Articles 52(2) and 46(4) as giving rise to a monetary claim for unpaid rent. The landlord did not submit written evidence of this document nor did they articulate what the articles of this document provide.

The tenant claims a monetary award in the amount of \$5,550.00 for the following items:

<b>Item</b>	<b>Amount</b>
Moving Costs September, 2017	\$205.00
Moving Costs October, 2017	\$205.00
Return of Security Deposit	\$1,250.00
Return of 3 Months Rent	\$3,750.00
New Rental for Parking	\$140.00
<b>TOTAL</b>	<b>\$5,550.00</b>

There was an order dealing with the security deposit arising from the earlier hearing. The tenant claims the cost of moving from the rental unit and the additional cost of parking incurred. The tenant claims a recovery of rent paid for the tenancy as they feel the rental unit was not inhabitable.

### Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. I heard the earlier applications from the parties under the file numbers reference on the first page of this decision. At the earlier hearing I made a finding on the respective monetary claims and the disposition of the security deposit for this tenancy. I find that much of both applicants' present claims are a duplication of their earlier application. When an arbitrator makes a conclusive finding at a hearing it is not open for the parties to attempt to re-argue the same issues at a new hearing. I therefore, will only deal with new issues raised in the present application.

Specifically, the landlord's monetary claim for recovery of carpet cleaning, the rent for this tenancy and the disposition of the security deposit were conclusively ruled upon at the earlier hearing and are dismissed as I have no authority to make further findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the landlord's claim. I find that the landlord has failed to establish that any monetary loss they suffered were a result of the actions or negligence of the tenant. While the landlord suggested that the damage to the property was caused by the tenant I find that there is insufficient evidence in support of the landlord's position. I consequently dismiss this portion of the landlord's application.

The landlord references something which he calls the "Leasing Act". As the landlord refers to paragraphs of this supposed legislation that does not correspond to the *Act*, it

is evident that this is not merely a mistitled reference to the *Act*. I find that the provisions of legislation, which there is no evidence exists anywhere but in the landlord's submissions, has no bearing on the present application. I find there is insufficient evidence in support of the landlord's claim for a monetary award for unpaid rent. I consequently dismiss the landlord's application.

I find that there is insufficient evidence in support of the full amount claimed by the tenant. I find that there is no basis for an award of moving costs or the cost of parking. There is insufficient evidence to find that these are costs that arise from the landlord's violation of the Act, regulations or tenancy agreement. The tenant was issued a Notice to End Tenancy and vacated the rental unit accordingly. I find that these are not costs that are recoverable in a claim for damages or loss. I find there is no evidentiary basis for an award of the return of 3 month's rent equivalent. Consequently, I dismiss the tenant's application.

### Conclusion

The applications of both the tenant and the landlord are 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: July 19, 2018

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Residential Tenancy Branch