



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** MNDCL-S, FFL

**Tenant:** OLC, FFT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- a Monetary Order for compensation from the tenant for other money owed pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, call witnesses and to cross-examine one another.

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

Both parties acknowledged receiving each other's Application for Dispute Resolution. In accordance with section 89 of the *Act*, I find that each party was duly served with the other party's Application for Dispute Resolution.

The landlord testified that evidence packages were sent to the tenant on July 10, 2018, and July 12, 2018. The tenant confirmed receiving and reviewing these evidence packages. In accordance with section 88 of the *Act*, I find that the tenant was duly served with this evidence.

The landlord testified that a third evidence package was sent to the tenant by way of registered mail on July 15, 2018.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure (the *Rules*) states that documentary evidence that is intended to be relied on at the hearing must be received by the other party not less than 14 days before the hearing. I find that the landlord did not serve the tenant with the third evidence package in accordance with the Rules and that the tenant may be prejudiced by this as they did not have a chance to respond to the landlord's third evidence package. For this reason the landlord's third evidence package is not accepted for consideration.

The landlord acknowledged receiving the tenant's first two evidence packages which were sent by registered mail on June 06, 2018 and July 07, 2018, and that she had reviewed the evidence packages. In accordance with section 88 of the *Act*, I find the landlord was duly served with the tenant's first two evidence packages.

The tenant testified that a third evidence package was sent to the landlord by way of registered mail on or about July 16, 2018.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure (the *Rules*) states that documentary evidence that is intended to be relied on at the hearing must be received by the other party not less than 14 days before the hearing. I find that the tenant did not serve the landlord with the third evidence package in accordance with the Rules and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's third evidence package. For this reason the tenant's third evidence package is not accepted for consideration.

The landlord submitted that an Amendment to an Application for Dispute Resolution (the landlord's Amendment) was provided in the landlord's July 12, 2018, evidence package that was sent to the tenant. The tenant confirmed receiving the landlord's Amendment and in accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's Amendment.

In the landlord's Amendment the landlord seeks to reduce their monetary claim from \$2,800.00 to \$700.00. As the tenant is not prejudiced by a reduced monetary claim, I allow the Landlord's Amendment.

The tenant testified that an Amendment to an Application (the tenant's Amendment) was served to the landlord by way of registered mail in their evidence package on July 07, 2018. In the tenant's Amendment the tenant seeks add a monetary claim in the amount of \$690.00 for moving costs. The landlord confirmed that she received this package on July 10, 2018, and was able to review and respond to it in one of their accepted evidence packages. In accordance with section 89 of the Act, I find that the landlord is duly served with the tenant's Amendment.

As the landlord has confirmed that she was able to review and respond to the tenant's Amendment to add a monetary claim, I will allow it.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for other money owed?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to authorization to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The landlord gave written evidence that this fixed term tenancy began on September 01, 2017, with a monthly rent of \$1,400.00 due on the first day of each month, with a

vacate date of August 31, 2018. The landlord testified that they have retained a portion of the security deposit, to apply to an outstanding utility bill, and that the tenant has signed their consent for the landlord to retain it. The landlord submitted that the remainder of the security deposit was returned to the tenant. The tenant confirmed that this was true.

The landlord provided in evidence:

- A copy of an internet advertisement for the rental unit dated June 16, 2018;
- A copy of a letter from a previous occupant of the rental unit and roommate of the tenant to end their tenancy and refers to the reason for ending the tenancy due to noise from the tenant in their kitchen; and
- Copies of various correspondences with the tenant by e-mail and text message regarding noise concerns from the rental unit and the end of the tenancy.

The tenant provided in evidence:

- A copy of a receipt for moving costs in the amount of \$677.25; and
- Copies of various correspondences by e-mail and text message with the landlord regarding noise concerns from the rental unit and the end of the tenancy

The landlord testified that the tenant ended their tenancy prior to the end of the signed fixed term lease agreement with the tenant which was set to end on August 31, 2018. The landlord stated that she put an advertisement on the internet and was only able to rent the unit out as of July 15, 2018. The landlord submitted that she is seeking one half month's rent for the loss of rent for July 2018.

In regards to the tenant's claim, the landlord referred to an addendum she had the tenant sign which indicates that the rental unit is in a quiet household and not a place for slamming doors, yelling or parties. The landlord stated that during the tenancy there were multiple incidents of yelling and doors slamming from the rental unit. The landlord stated that the tenant's previous roommate ended their tenancy due to excessive noise from the tenant.

The tenant testified that she was forced to move from the rental unit due to a breach of the tenant's right to quiet enjoyment and intrusion into their private life with multiple texts from the landlord. The tenant submitted that she is seeking to recover her moving costs due to being forced to move from the rental unit due to the perceived harassment from the landlord. The tenant maintained that she is a quiet person, always turning doorknobs to close doors.

### 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. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 (2)(b) of the *Act* states that a tenant may only end a tenancy effective on a date specified in the tenancy agreement as the end of the tenancy.

Residential Tenancy Branch Policy Guideline # 30 establishes that a tenant may only end their tenancy early if the landlord has breached a material term of the tenancy agreement.

Section 45 (3) of the *Act* states that if a landlord has breached a material term of the tenancy agreement, the tenant must give written notice of the breach to the landlord and gives a reasonable time for the landlord to correct the situation.

Although the tenant has demonstrated that they have incurred a loss for their moving expenses, I find that the tenant has not submitted sufficient evidence to demonstrate that their loss was due to the actions or neglect of the landlord.

I find that there is no notice of a breach of a material term of the tenancy agreement in evidence from the tenant to the landlord which would allow them to end the tenancy early. Even if the tenant had given a notice of a material breach in writing to the landlord, I find that the correspondence provided in evidence by both parties shows that the landlord was not unreasonable in the frequency or the content of concerns expressed to the tenant. I further find that the previous occupant's letter to end their tenancy supports the landlord's testimony that there were noise issues from the tenant which were within the landlord's right to address.

Based on the above, I find that the tenant chose to break their fixed term tenancy for their own personal reasons and it is not due to any actions or neglect of the landlord.

For the above reasons, I find the tenant has not demonstrated that she has suffered any damage or loss due to the actions or neglect of the landlord, and for this reason, I dismiss the tenant's monetary claim, without leave to reapply.

As this tenancy has ended I find that the tenant's request to have the landlord comply with the *Act* is no longer applicable and I dismiss it, without leave to reapply.

As the tenant has not been successful in their application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

Based on the testimony of both parties, I find that the landlord and the tenant have both agreed that the security deposit has been resolved in accordance with the *Act*. For this reason the landlord's application to retain the security deposit is dismissed, without leave to reapply.

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.

I find that it is undisputed that the landlord has suffered a loss of rental income for half of July 2018. I further find that this loss of rental income is due to the tenant ending their fixed term tenancy prior to the date agreed upon on the tenancy agreement, in contravention of section 45 (2)(b) of the *Act*. I find that the landlord has mitigated their loss of rental income by placing an advertisement on the internet for a new tenant and that the new tenancy commenced on July 15, 2018.

Based on the evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$700.00, for the loss of one half month's rental income for July 2018.

As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I dismiss the tenant's Application in its entirety, without leave to reapply.

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover lost rental income and to recover the filing fee for this Application:

Item	Amount
One Half Month's Rent for July 2018	700.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$800.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 27, 2018

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Residential Tenancy Branch