



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent.

The landlord, the tenant and a former occupant of the rental unit attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to 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, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application and the landlord's evidence which was sent by registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and evidence.

The tenant did not provide any evidence or testimony that they served evidence to the landlord

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

The landlord and tenant agreed that this tenancy commenced on October 01, 2016, with a monthly rent of \$1,000.00, due on the first day of the month. The landlord and tenant agreed that the landlord currently retains a combined security deposit and pet deposit totaling \$1,000.00.

The landlord provided in evidence:

- A copy of a utility bill in the amount of \$486.59 dated December 18, 2017;
- Copies of utility bills for March 2018;
- A copy of a written statement dated August 23, 2018, from the landlord detailing their expanded monetary claim for three months' unpaid rent, utility bills for \$461.57 and \$312.74 as well as a deductible for an insurance claim in the amount of \$1,000.00; and
- A copy of a letter from the tenant and occupant to the landlord dated January 05, 2018, in which the tenant and occupant detail their issues with the house, that they are having mold samples taken and that the tenant just had a utility bill in the amount of \$500.00.

The landlord testified that they are seeking \$3,000.00 in unpaid rent for January 2018, February 2018 and March 2018 due to the tenants breaking their lease early. The landlord stated that they only found out that the tenant was vacating the rental unit when the utility company called them to advise that the tenant requested to have the meter read one last time and to close their account. The landlord stated that, when they called the tenant, they were informed that the tenants were still living in the rental unit. The landlord testified that they are also seeking \$461.57 for one unpaid utility bill and \$312.74 for a different utility bill for March 2018.

The tenant testified that they actually gave written notice to the landlord in December 2017 and that the letter the landlord provided in evidence dated January 05, 2018, was actually the second letter served to the landlord regarding the end of the tenancy.

The tenant testified that there was extensive flooding in the rental unit in June 2017 and that the landlord did not take the necessary steps to mitigate their losses and damage to the rental unit which resulted in living conditions that negatively affected the tenant and the other occupants' health which necessitated the tenant and occupants moving out of the rental unit. The tenant stated that the utility bill was paid on December 23, 2017, and that he had advised the landlord to retain the security deposit to cover the unpaid rent for January 2018. The tenant states that he was not aware that the landlord was claiming for additional rent and utilities as the Application only stated a claim of \$1,000.00 for unpaid rent

### Analysis

I find that the Application only lists a claim for unpaid rent in the amount of \$1,000.00 but that the landlord also indicates a utility bill being claimed for in the amount of \$486.59, in addition to the unpaid rent. I further find that the landlord has not submitted an Amendment to an Application for Dispute Resolution to increase their monetary claim.

I find that the tenant would be prejudiced by the consideration of the monetary items on the landlord's expanded list of claims dated August 23, 2018, as the landlord did not submit an amendment to the Application and the tenant was not properly notified of the claims against them as soon as it was possible as per the Residential Tenancy Branch Rules of Procedure. I find that the landlord waited until a little more than two weeks before the hearing to submit the additional claims and for the above reasons, the landlord's additional monetary claims in the letter dated August 23, 2018 are dismissed, with leave to reapply. I will only consider the landlord's claim for \$1,000.00 in unpaid rent for January 2018 and the utility bill in the amount of \$486.59 date December 18, 2017.

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 landlord 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and affirmed testimony, I find that the landlord provided a utility bill dated December 18, 2017; however, I find that they did not provide any proof that they actually paid that utility bill. Based on a balance of probabilities, I find that it would be unreasonable for the tenant to try to have the meter read one last time to pay

what was owed if they intended to not pay the utility bill. As the landlord has not provided any evidence that they actually paid the utility bill in question and based on a balance of probabilities, I accept the tenant's testimony that they had paid the utility bill in question.

For the above reasons, as the landlord has not provided evidence that they paid the utility bill in question, I dismiss the landlord's monetary claim for utilities in the amount of \$486.59, 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. As it is undisputed that the tenant did not pay the monthly rent for January 2018, I find that the landlord is entitled to a monetary award in the amount of \$1,000.00.

Although the landlords' application does not seek to retain the tenant's security and pet damage deposit, using the offsetting provisions of section 72 of the *Act* I allow the landlord to retain the tenant's security and pet damage deposit in the amount of \$1,000.00 in full satisfaction of the monetary award.

### Conclusion

Pursuant to section 72 of the *Act*, I allow the landlord to retain \$1,000.00 from the tenant's security and pet damage deposit, which is now reduced to \$0.00.

The remainder of the landlord's monetary claim is dismissed, with 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: September 21, 2018

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Residential Tenancy Branch