



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for unpaid rent and for damage to the unit and 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.

Both parties 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.

As the tenant confirmed that in mid-February 2018, they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written and photographic evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Near the beginning of this hearing, the landlord confirmed that they were seeking a monetary award of \$2,378.87 listed on their Monetary Order Worksheet of August 2018, instead of the original \$5,535.06, plus the recovery of the filing fee identified in their original application. I have reduced the requested monetary award to the amount noted on the Monetary Order Worksheet.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage arising out of this tenancy and for other money owed? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On July 29, 2017, the parties signed a one-year fixed term tenancy agreement (the Agreement) for a tenancy for this partially furnished rental suite that was to run from August 27, 2017 until August 31, 2018. Monthly rent was set at \$1,150.00, payable in advance on the first of each month. The tenant was also to pay 1/2 of the hydro costs for this rental home, 1/4 of the utility bills issued by the municipality, and \$56.00 each month for cable and internet services. The landlord continues to hold the \$575.00 security deposit paid by the tenant on July 29, 2017.

On January 1, 2018, the tenant called or texted the landlord to advise that they were planning to end their tenancy almost immediately. The tenant paid the monthly rent that was due for January 2018, but ended the tenancy and surrendered vacant possession of the premises to the landlord on January 7, 2018.

The parties agreed that a joint move-in inspection occurred when this tenancy began, and the landlord issued a report of that move-in inspection and conveyed a copy to the tenant. On January 7, 2018, at the time the parties had agreed to conduct a joint move-out condition inspection, the tenant designated his cousin, the tenant's witness at this hearing to meet with the landlord. The landlord was accompanied at that meeting by her spouse. The parties gave different accounts as to why the tenant's witness did not remain at the rental suite for the joint move-out condition inspection.

The tenant's witness testified that the landlord and her spouse were belligerent from the outset of that meeting, asking for identification from the witness, demanding the return of the keys and refusing to return the tenant's security deposit. The witness maintained that the landlord and her spouse were very intimidating at that meeting. As the witness was concerned about her safety, she told them that she was going to go to the police to report their verbal abuse. Although the witness departed the premises without participating in a joint move-out inspection of the premises, the witness did not go to the

police about this matter and did not keep any notes, nor did she take photos of what she maintained was a "very, very clean" rental space at the end of this tenancy.

By contrast, the landlord's spouse testified that the tenant's witness had a very clear agenda from the outset of the scheduled joint move-out condition inspection. The landlord's spouse noted that this was a legally required step in the tenancy process and that as a result he asked for identification from the tenant's witness to ensure that this person was the individual designated by the tenant to conduct the move-out inspection. Rather than waiting for the room-by-room inspection of the premises to discuss the return of the tenant's security deposit, the landlord's spouse said that the tenant's witness demanded the return of the security deposit before this inspection commenced. The landlord gave similar sworn testimony and entered written evidence with a similar account of what transpired that day. As the tenant's witness was threatening to go to the police and left the premises without conducting a joint move-out condition inspection of the premises, the landlord obtained the keys from the tenant's witness and proceeded with their own move-out condition inspection. The tenant agreed that the landlord sent him a copy of the landlord's move-out condition inspection report.

The parties submitted very different photographs of the condition of the rental unit at the end of this tenancy. Some of the landlord's photographs showed that the premises were not properly cleaned at the end of this tenancy. The tenant's photographs showed parts of the rental unit that were clean. Although the parties agreed that these photographs were of the same rental unit, the landlord's spouse noted that the parties provided photographs that were most reflective of their assertions with respect to the cleanliness or lack thereof at this rental unit at the end of this tenancy.

The landlord's Monetary Order Worksheet entered into written evidence outlined the details of the landlord's claim as follows:

| <b>Item</b>  | <b>Amount</b> |
|--|---------------|
| Janitorial Services- Cleaning                              | \$100.00      |
| Professional Cleaning of Stains on Seat Cushions of Chairs | 104.95        |
| Changing Locks and Key Replacement                         | 184.37        |
| Hydro Bill 1   | 51.85         |
| Hydro Bill 2   | 14.61         |
| Municipal Utility Bill                                     | 46.72         |
| Internet & Cable Bill                                      | 56.00         |

|  |                   |
|--|-------------------|
| Unpaid Rent February 2018  | 1,150.00          |
| Airline Rescheduling/Change Fee  | 236.60            |
| Canada Post Mailing Charges  | 28.77             |
| Recovery of Filing Fee for this Application  | 100.00            |
| Missing Shower Stopper   | 5.00              |
| Landlord's Time Cleaning Rental Unit   | 100.00            |
| Rescheduling/Cancelling Original Bookings in China for trains, flights/hotels/appointments | 200.00            |
| <b>Total Monetary Order Requested</b>  | <b>\$2,378.87</b> |

The landlord entered into written evidence copies of receipts and invoices to support the above list of items for which the landlord was seeking reimbursement.

The tenant did not dispute the landlord's claim for his portion of the two hydro bills, the utility bill and the internet and cable bill.

The landlord gave sworn testimony supported by written evidence that she commenced attempts to re-rent the premises shortly after the tenant notified her of his intention to end this fixed term tenancy. She listed the availability of the rental unit on popular English language and Chinese rental websites, and also attempted to re-rent through her network of friends and acquaintances. The landlord was seeking \$1,150.00 per month if the premises were rented to a single person and \$1,300.00, if rented to two people. The landlord testified that she received between five and ten enquiries in January, and fewer in February. The landlord said that it was difficult to obtain new tenants in mid-winter as many of the prospective tenants would be students who had already made living arrangements for their school year. The landlord said that she did have a number of showings of the premises and one young couple was poised to rent this suite from her in January, but this arrangement fell through as parents of the young couple did not agree with their proposal to live together. The landlord said that she was able to re-rent the premises to two new tenants as of May 1, 2018. These tenants signed a lease whereby they pay \$1,300.00 per month.

The landlord also asked for the reimbursement of the charges she incurred to change her scheduled flight to China and for the change fees she incurred to alter plans for her two week trip there in January 2018. She maintained that she had to attend to the cleaning and re-rental of the premises and had to modify her travel plans to accommodate this unexpected ending of this fixed term tenancy.

## Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous bills, invoices and letters, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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 on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of their fixed term tenancy Agreement because they vacated the rental premises prior to the August 31, 2018 date specified in that Agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

Although the tenant paid rent for January 2018, there is undisputed evidence that the tenant did not pay any rent for February 2018, the rental loss claimed by the landlord. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for February 2018. The landlord has submitted listings of the attempts to advertise the availability of the rental unit, and received calls and enquiries from prospective renters. The landlord has not claimed for anything in this regard beyond February 2018, even though she was unable to re-rent

the premises until May 1, 2018. As such, I am satisfied that the landlord has discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss.

I issue a monetary award in the landlord's favour of \$1,150.00 for the month of February 2018. However, as the landlord was able to obtain \$1,300.00 in monthly rent for the months of May, June, July and August 2018, I find that the landlord received a \$150.00 net benefit for each of these months as a result of the tenant's decision to end this tenancy prior to the scheduled August 31, 2018 end date to this fixed term tenancy. Consequently, I find that the landlord's loss of rent for February 2018 is to be reduced by \$600.00 to reflect the additional rent the landlord received for the last four months of the tenant's fixed term tenancy, as the net rental loss needs to be balanced against the rental gains the landlord received as a result of the early end to this fixed term tenancy.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

After reviewing and comparing the photographs presented by the parties and considering the joint move-in and move-out condition inspection reports, I find that there is sufficient evidence to warrant the issuance of a monetary award for cleaning to the landlord. Without the participation of the tenant or the tenant's representative at the joint move-out condition inspection, I find that the written record provided by the landlord is the most reliable point of comparison between the condition of the premises at the end of this tenancy with the condition as agreed upon by both parties at the joint move-in condition inspection. In allowing all of the landlord's claim for cleaning, I note that these expenses are not exorbitant and rely on what is essentially a nominal amount of compensation for the landlord's time in cleaning the rental premises, plus costs incurred to professionals the landlord incurred. As I do not find that the tenant left the rental unit reasonably clean at the end of this tenancy, I allow the landlord's application for the recovery of \$100.00 in janitorial cleaning services, for \$104.95 to have stains removed from seat cushions and \$100.00 for the landlord's own time in cleaning the rental unit following the end of this tenancy.

As the tenant did not dispute the landlord's claim for unpaid bills that remained after this tenancy ended, I allow the landlord's claim for the recovery of losses incurred as a result of the tenant's failure to pay the two hydro bills, the municipal utility bill and the internet and cable bill.

As the tenant did not dispute the landlord's claim for the \$5.00 replacement of the shower stopper, I allow the landlord a monetary award in this amount for this item.

As mentioned at the hearing, section 25(1) of the *Act* establishes that a landlord bears all costs of rekeying or otherwise changing the locks so that a former tenant does not retain access to a rental unit. Since the landlord testified that the landlord did have keys to access the rental unit at the end of this tenancy, the landlord bears responsibility for the rekeying costs. The landlord's application for the recovery of these costs is dismissed without leave to reapply.

The only hearing related costs which an applicant is able to recover from a respondent is the filing fee for their application. As the landlord has been successful in this application, the landlord is entitled to recover the \$100.00 filing fee, but not the Canada Post mailing charges the landlord has claimed as part of this application.

I have also considered the landlord's application for recovery of change fees applied by the airline and for the rescheduling of bookings for trains, flights and hotels, which the landlord incurred when the tenant ended this fixed term tenancy on short notice in January 2018. While I have no doubt that the landlord did incur these costs, a landlord has the responsibility to leave someone in charge of the landlord/tenant relationship when they are expecting to be absent from the location of the rental unit for an extended period of time. This is part of the business of being a landlord. If the landlord was planning to be away for a two week period overseas without making arrangements for an agent or property manager to look after the landlord/tenant relationship during that time, I find that the landlord becomes responsible for any costs associated with having to change plans and attend to duties that could have been handled by a properly delegated agent who would have been responsible for acting on her behalf. For these reasons, I find that the costs the landlord incurred in changing her plans could have been avoided had the landlord made arrangements beforehand to have someone look after her business as a landlord while she was travelling abroad. I dismiss the landlord's claim for a monetary award for the recovery of the airline change fees and the costs of rescheduling other bookings without leave to reapply.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damages and losses arising out of this tenancy and the filing fee for this application, and to retain the tenant's security deposit:

| <b>Item</b>  | <b>Amount</b>   |
|--|-----------------|
| Unpaid Rent February 2018 Less<br>Additional Rent Received by Landlord for<br>May, June, July and August 2018 (4<br>months @ \$150.00 = \$600) ; \$1,150.00 -<br>\$600.00 = \$550.00 | 550.00          |
| Janitorial Services- Cleaning  | \$100.00        |
| Professional Cleaning of Stains on Seat<br>Cushions of Chairs  | 104.95          |
| Landlord's Time Cleaning Rental Unit   | 100.00          |
| Hydro Bill 1   | 51.85           |
| Hydro Bill 2   | 14.61           |
| Municipal Utility Bill   | 46.72           |
| Internet & Cable Bill  | 56.00           |
| Missing Shower Stopper   | 5.00            |
| Filing Fee   | 100.00          |
| Less Security Deposit  | -575.00         |
| <b>Total Monetary Order</b>  | <b>\$554.13</b> |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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: September 01, 2018

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Residential Tenancy Branch