



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDL-S MNRL-S

### **Introduction**

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

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

MR ('landlord') appeared and testified on behalf of the landlord in this hearing. 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.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

### **Background and Evidence**

This month-to-month tenancy began on June 1, 2016, with monthly rent was set at \$1,395.00. The landlord collected a security deposit of \$697.50, which the landlord still holds. Both parties confirmed in the hearing that the tenant moved out on December 1, 2017.

The landlord testified that they received the tenant's notice that she planned on vacating on December 1, 2017. The landlord submitted a copy of the handwritten letter dated November 1, 2017 noting that she wished to terminate the tenancy effective December 1, 2017. The tenant

testified that she had attempted to serve the landlord with the notice on October 31, 2017 at 9:30 p.m., but nobody was in the office. The tenant testified that she placed it in the mail slot on November 1, 2017. The landlord testified that they received the notice on November 3, 2017. The landlord is seeking compensation for loss of half a month's rent as they were not able to find a new tenant until December 16, 2017, and the tenant did not pay any rent for December 2017.

The landlord is also seeking compensation as follows:

Painting of Walls/Banister	\$551.25
Painting Materials	153.37
Replacement Blinds	131.70
Garbage Removal and Labour for Replacement of Blinds	100.00
Rekeying/New Locks	250.00
Light Bulbs	9.99
Painting of Garage Walls/Ceiling	100.00
Cleaning	40.00
Loss of Rental Income	697.50
<b>Total Monetary Award Requested</b>	<b>\$2,033.81</b>

The landlord testified that the unit was freshly painted before this tenancy began, and that the blinds were approximately 3 years old, and were in good condition. The landlord's witness, MS, attended the hearing, as he as the maintenance person who did the majority of the work in the landlord's monetary claim. The landlord submitted a copy of the inspection report, as well as photos and receipts in support of their claim. The landlord provided undisputed testimony that the tenant failed to return the full set of keys at the end of the tenancy, and the landlord only received the remaining key after the locks were changed.

The tenant testified that she left the unit in reasonably clean condition. .She submitted a cleaning receipt which is an unsigned word document titled "invoice" for cleaning services on November 30, 2017. The tenant also submitted a receipt for paint dated November 30, 2017, as well as witnesses statements to support that the tenant, with the assistance of these parties, complied with section 37(2)(a) of the *Act*.

## **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 45 of the *Residential Tenancy Act* reads in part as follows:

### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the tenant did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. Although it was disputed as to the exact date the tenant served the landlord with the notice of termination, it is clear that the indicated effective date of December 1, 2017 did not fall on the day before the day the rent is payable under the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this periodic tenancy, and I therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and was only claiming half the rent as compensation for her loss. I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for December 2017 as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$697.50 for half a month of lost rental income due to the tenant's failure to comply with section 45 of the *Act*.

I find that it was undisputed that the tenant did not return the full set of keys to the landlord, and as a result the landlord suffered a monetary loss to replace the locks. Accordingly I allow the landlord's monetary claim for \$250.00

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidential materials submitted for this hearing, as well as the sworn testimony of both parties.

I find that the tenant provided detailed evidence to support that she had complied with section 37(2)(a) of the *Act* when vacating the rental unit. In light of the conflicting testimony, and in consideration of the fact that the party claiming the loss bears the burden of proof, I find that the landlord has not provided sufficient evidence to support that the tenant failed to properly clean or repaint the rental unit. On this basis, I dismiss the landlord's monetary claim for cleaning and painting.

I find that the landlord's evidence supports that the burnt out lightbulbs were not replaced by the tenant. Accordingly, I allow this portion of the landlord's monetary claim.

I find that the landlord has demonstrated that portions of the blinds were damaged, which the landlord testified was 3 years old, with various portions replaced as needed. The landlord testified that some portions were new at the beginning of the tenancy, and I find that the landlord's condition inspection report supports that the blinds are inspected and repaired on a regular basis. On this basis, I find that the landlord is entitled to compensation for the damage that took place during this tenancy.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the blinds. As per this policy, the useful life of venetian blinds and drapery is 10 years. As the oldest blinds were 3 years, as I am unable to determine the age of the each individual portion of the blinds I will consider the blinds to be 3 years old when the tenant moved out in December of 2017. This means that at the end of the tenancy the blinds had approximately 7 years of useful life left. The approximate prorated value of the remainder of the useful life of the blinds is \$92.19 ( $\$131.70/120 \times 84$ ). The landlord submitted a \$100.00 claim for the labour to replace the blinds as well as remove garbage. As I am unable to determine which portion of the claim pertains to the blinds, I dismiss this portion of the landlord's monetary claim without leave to reapply. Accordingly, I find the landlord is entitled to \$92.19 for the blind repairs and replacement.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$697.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$697.50 of the tenant's security deposit in satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$402.18 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in satisfaction of their monetary claim. The remaining portion of the landlord's monetary claim is dismissed without leave to reapply.

Replacement Blinds	\$92.19
Rekeying/New Locks	250.00
Light Bulbs	9.99
Loss of Rental Income	697.50
Recovery of Filing Fee	50.00
Less Security Deposit	-697.50
<b>Total Monetary Award</b>	<b>\$402.18</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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 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: October 18, 2018

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Residential Tenancy Branch