



# 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

### **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 compensation for 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.

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 sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

### **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 in November 2013, and ended on July 1, 2017. Monthly rent was set at \$1,350.00, payable on the 30th day of each month. The landlord collected a security deposit of \$675.00 which the landlord still holds.

The landlord is requesting monetary compensation as follows:

Unpaid Rent	\$1,350.00
Unpaid Electricity	112.33
Cleaning	1,200.00
New locks & showerhead	133.94
Cleaning Supplies	40.85
Paint	26.12
Mop	6.71
Dumping Cost	6.50
Junk Removal & Disposal	789.75
Unpaid Gas Bill	38.85
Hotel Accommodation	119.60
Lights	8.56
Weedeater	68.31
Fuel for trips	252.14
Meals	102.77
<b>Total Monetary Award Requested</b>	<b>\$4,256.43</b>

The landlord testified that the tenant had informed her that he was unable to afford the rent for the home, and then notified her that he was leaving for vacation. The landlord testified that the tenant left on vacation July 1, 2017 without paying rent for July 2017, and never returned. The tenant confirmed that that no rent was paid for July 2017. The landlord issued a 10 Day Notice for Unpaid Rent on July 1, 2017. The landlord testified that the tenant abandoned the home without providing a forwarding address, and she had to use the services of a skip tracer to locate the tenant. The landlord testified that the tenant did not clean the home, nor did he remove all his belongings. The landlord testified that the garage was full of the tenant's belongings, and the tenant did not return the keys to her. Although the landlord admitted that no move-in inspection was done, a move-out inspection was not completed with the tenant as the tenant did not give her proper notice that he was leaving.

Due to the condition of the home, the landlord was only able to re-rent the upper portion of the home as of July 27, 2017 for \$850.00 per month. The landlord ended up selling the home in September 2017. The landlord is seeking a monetary order for loss of rent

for July 2017, the cost of cleaning plus materials, the cost of changing the locks, junk removal, as well as unpaid utilities. The landlord is also requesting the reimbursement of her hotel, fuel, and meal costs as she resided in a different city and had to stay in order to clean the property.

The landlord submitted documentary evidence, including invoices and receipts, as well as photos in support of her claim.

The tenant testified that some of the belongings left behind were there before the tenancy began. The tenant admitted that he did not clean the home thoroughly due to lack of time as he had received the 10 Day Notice for unpaid rent. The tenant admitted that July 2017 was not paid.

### **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.

I find that the tenant did not end this tenancy 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 tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a form required by section

45(1) of the *Act*. I, therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that she was only able to re-rent a portion of the home at the end of July 2017.

**Section 26** of the *Act*, in part, states as follows:

***Rules about payment and non-payment of rent***

**26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenant was obligated to pay the rent and utilities as per the tenancy agreement and the *Act*. I find the landlord provided undisputed evidence to support that the tenant have not paid the outstanding rent and water bill for this tenancy, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent or utilities, nor do I find that the tenant had a right under the *Act* to deduct or withhold all or portion of the rent or utilities. I find that the landlord suffered a monetary loss of rent for the month of July, 2017, and accordingly I find that the landlord is entitled to \$1,350.00 for loss of rental income and \$112.33 for the unpaid electric bill, and \$38.85 for the unpaid gas bill.

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 by the landlord, as well as the sworn testimony of both parties.

I find that the tenant did not dispute the fact that he did not leave the home in reasonably clean condition citing lack of time. I find that although the tenant testified that not all the abandoned belongings were his, the tenant did not completely dispute the fact that he left some of his belongings behind. As I am satisfied that the landlord provided sufficient evidence to demonstrate that the tenant failed to comply with section 37(2)(a) at the end of this tenancy, I allow the landlord's application for the cost of cleaning, cleaning materials, lights, paint, and costs associated with garbage disposal and dumping.

In regards to the landlord's claim to recover the cost of accommodating, meals, and fuel, I find that this was a business decision made by the landlord. I am not satisfied the landlord has demonstrated that this decision was a necessary one due to the tenant's violation of the Act, regulation, or tenancy agreement. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I find that the landlord failed to provide sufficient evidence to support her claim for the weed eater. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

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 tenant's security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain tenant's security deposit in satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$3,088.61 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 landlord's monetary claim for hotel accommodation, meals, and fuel are dismissed without leave to reapply.

Unpaid Rent	\$1,350.00
Unpaid Electricity	112.33
Cleaning	1,200.00
New locks & showerhead	133.94
Cleaning Supplies	40.85
Paint	26.12
Mop	6.71
Dumping Cost	6.50
Junk Removal & Disposal	789.75
Unpaid Gas Bill	38.85
Lights	8.56
Half of Filing Fee	50.00
<b>Less Security Deposit</b>	<b>-675.00</b>
<b>Total Monetary Award</b>	<b>\$3,088.61</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 25, 2018

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Residential Tenancy Branch