



# 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 OPC OLC MNDC-T FFT

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- and 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

The tenant requested:

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

Both parties confirmed at the commencement of the hearing that the tenant moved out on November 7, 2018. As this tenancy has ended, all non-monetary aspects of both applications are cancelled.

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

Are the parties entitled to the monetary orders that they applied for?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

### **Background and Evidence**

This fixed term tenancy began on March 15, 2018, and the tenant moved out on November 7, 2018, prior to the end of the tenancy which was to end on March 15, 2019. Monthly rent was set at \$1,058.00. The landlords collected a security deposit in the amount of \$525.00, which they still hold. Both parties confirmed that no move-in or move-out inspection reports were completed for this tenancy.

The landlords submitted an amended monetary claim for \$21,575.00 in order to recover their losses associated with the tenancy as listed below:

<b>Item</b>	<b>Amount</b>
Damage to house	\$5,000.00
Unpaid Rent for November 2018	1,050.00
Damage deposit for failure to clean	525.00
Text Messages March-April 2018	2,000.00
July text message	5,000.00
Sexual Text Message	500.00
Harassing Text	500.00
Avoiding Inspection	2,000.00
Noise	2,000.00
Effect on Wife's Health	3,000.00
<b>Total Monetary Order Requested</b>	<b>\$21,575.00</b>

The tenant submitted an amended monetary claim for \$4,025.00 in monetary compensation as set out in the table below:

<b>Item</b>	<b>Amount</b>
Rent reduction March-April 15, 2018	\$500.00

Rent reduction April 15-May 15 2018	500.00
Rent reduction May 15-Jun 15 2018	500.00
Rent reduction Jun 15-July 15 2018	500.00
Rent reduction July 15-August 15 2018	500.00
Rent reduction August 15-September 15 2018	500.00
Rent reduction September 15 – October 15, 2018	500.00
Return of Damage Deposit	525.00
<b>Total Monetary Order Requested</b>	<b>\$4,025.00</b>

The landlords testified that the tenant moved out before the end of the fixed term tenancy, on November 7, 2018, and did not pay November 2018 rent. The landlords are seeking a monetary order for the November 2018 rent. The landlords were able to find a new tenant for November 15, 2018, with monthly rent set at \$1,250.00.

The landlords also testified that the tenants left damage to the home, and failed to properly clean the home at the end of the tenancy.

The landlords are seeking monetary compensation in the amount of \$15,000.00 for the tenant's behaviour during this tenancy, which involved allowing an additional occupant in the home, whom the tenant had a volatile relationship with, refusal to comply with inspection requests, inappropriate and harassing text messages, calling the police about harassment, and causing stress to the pregnant landlord's wife, whose baby was underweight. The landlords submitted photos and text messages in their evidence in support of their claim, including a photo of a tomato sent by the tenant that the landlord considered sexual in nature. The landlords testified that the tenant tampered with the vents, and damaged the walls. The landlords also testified that the tenant had lied about being single, and was in a relationship that was volatile, and involved loud arguments.

The tenant also made a monetary claim for this tenancy. The tenant testified that the landlords had sent her inappropriate text messages before this tenancy even began, wishing her happy birthday. The tenant testified that the landlords took issue with her having visitors, which she was denied during this tenancy. The tenant testified that she was videotaped and harassed to the point where she feared for her safety, and as a result decided to move out. The tenant testified that the landlord violated her privacy and tormented her with repeated requests for inspections beginning within 10 days of her moving in, and that he took issue with her guests.

The tenant denies damaging the property, stating that any damage was due to wear and tear.

### **Analysis**

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 or 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 both applicants to prove, on a balance of probabilities that the other party had failed to comply with the *Act* and tenancy agreement, which contributed to the loss claimed.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [*tenant's notice*];
  - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the tenant moved out, before the end of this fixed-term tenancy. However, the onus still falls on the landlords to demonstrate that the tenant failed to comply with the *Act*, and that this contravention of the *Act* contributed to the monetary loss claimed. Furthermore, I must be satisfied that the landlords mitigated made an effort to mitigate the tenant's exposure to the landlords' monetary loss of rent as is required by section 7(2) of the *Act*. In this case the tenant moved out on November 7, 2018, and the landlords were able to re-rent the home for \$200.00 more per month. Accordingly, I dismiss the landlord's monetary claim for loss of rental income for November 2018 in the amount of \$1,050.00. As the tenant did not pay rent for November 2018, and failed to move out until November 7, 2018, I allow a monetary order in the amount of \$245.00 ( $\$1,050.00/30 \times 7$  days) for over holding.

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. Sections 23 and 35 of the *Act* require the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. In the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy beyond what was

agreed to by the tenant. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply.

I have reviewed the claim and evidence submitted by the landlords for the tenant's failure to clean the home. Although I am satisfied that the tenant failed to properly clean the home, I find that the landlord did not support the value of the loss claimed.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

I accept the landlords' evidence and testimony that the tenant failed to properly clean the home at the end of the tenancy. I find that the tenant breached section 37(2)(a) of the Act. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal damages of \$100.00 for the tenant's failure to properly clean the home and property.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The landlords requested \$15,000.00 for aggravated damages during this tenancy. Similarly, the tenant submitted a claim in the amount of \$3,500.00 for the suffering she experienced during this tenancy. Although I sympathize with both parties, and the fact that both suffered a significant level of stress, I find that the both parties failed to establish how their pain and suffering was specifically due to the deliberate or negligent act or omission of the other party. The significant volume of evidentiary material submitted by both parties do support an increasingly negative relationship between both parties, but I am not satisfied that the level of aggravation experienced was one-sided in nature. The landlords submitted that their child was underweight, but I am not satisfied that the landlords had demonstrated that this was strictly due to the tenant's behavior and actions. I am not satisfied that either met the burden of proof in supporting their claims.

I find that both parties failed to sufficiently support the value of their losses claimed, either referenced or supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses claimed in their application. Furthermore I find that the both parties failed failed to establish how their suffering was due to the deliberate or negligent act or omission of the other party. I find that both parties were participants in an increasingly dysfunctional relationship that resulted in stress for both parties. On this basis I dismiss both the tenant and landlords' monetary claims for the losses.

As the tenant was unsuccessful with her application, I also dismiss her application to recover the filing fee without leave to reapply. As the landlords were partially successful with his claim, I allow the landlords to recover half of the filing fee for this application.

The landlords continue to hold the tenant's security deposit of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

**Conclusion**

As the tenancy ended in November 2018, the non-monetary portions of both applications are cancelled.

I issue a \$130.00 Monetary Order in favour of the landlords under the following terms:

<b>Item</b>	<b>Amount</b>
Over holding for November 2018	\$245.00
Nominal Losses for Tenant's Failure to Clean	100.00
Recovery of half of Filing Fee for this Application	50.00
Less Security Deposit	-525.00
<b>Total Monetary Order</b>	<b>\$130.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant 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.

The remaining monetary claims are dismissed without 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: January 2, 2019

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Residential Tenancy Branch