



# 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* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its 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. The tenant acknowledged receipt of evidence submitted by the landlord, the tenant did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet 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, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on September 11, 2018 but ended early on September 30, 2018. The tenants were obligated to pay \$1350.00 per month. The tenants paid a security and pet deposit however the cheque "bounced" and the landlord does not have any monies in trust. The landlord testified that the tenant moved out and left some minor damage to the counter top. The landlord testified that they lost revenue for the month of October 2018 as a result of the tenants' giving only two days' notice that they would be moving out. The landlord testified that they also suffered a \$50.00 loss for the remainder of the term in order to rent the unit. The landlord testified that she is seeking the costs to deal with possible bylaw fines and the cost of re-renting the unit and the stress she has incurred as a result of the tenants.

The landlord is applying for the following:

1.	Huard Tile Estimate	\$399.00
2.	Cost to find new tenant	400.00
3.	Unpaid October rent	1350.00
4.	Rental income difference	550.00
5.	Dishonored cheque	7.50
6.	By Law Violations	2600.00
7.	Filing Fee	100.00
8.	Distress	1000.00
9.	Canada Post	23.90
10.		
	Total	<b>\$6430.40</b>

The tenant gave the following testimony. The tenant testified that he loved the apartment and would have stayed if not for the property manager. The tenant testified that the property manager refused to allow a Telus technician into the communications room so that the tenant could hook up his cable and internet. The tenant testified that he tried numerous times to get the property manager to allow access but to no avail. The tenant testified that he was "going crazy staring at the walls" and just wanted his cable and internet. The tenant testified that the same property manager imposes baseless

finer that he is challenging with the strata. The tenant testified that other than possibly accepting a \$200.00 fine for not booking the elevator at move out, he adamantly disputes the landlords claim in its entirety.

### Analysis

While I have turned my mind to all the documentary evidence 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Counter Top Repair – 399.00

The landlord advised that she has not conducted the work. The landlord has failed to show what the actual "out of pocket" cost is and therefore, I must dismiss this portion of her claim.

Cost to Find New Tenant \$400.00 & Distress \$1000.00

The landlord submits that she should be entitled to \$20.00 per hour x 20 hours of time put in to re-rent the unit along with a \$1000.00 for the distress of dealing with this matter. The landlord has failed to illustrate and provide sufficient evidence to support the amount as claimed to re-rent the unit. In addition, the distress of dealing with this hearing and this matter is to be expected and reasonable when conducting business as a landlord. Based on the above, I dismiss this portion of the landlords claim.

Unpaid Rent \$1350.00

In the tenants' own testimony he confirmed that he only gave two days' notice and moved out. I find that the tenant was not justified in ending the tenancy so abruptly without first giving the landlord notice of any issues and an opportunity to correct it. Section 45 of the Act addresses the issue before me as follows:

**Tenant's notice**

- 45** (2) A tenant may end a fixed term 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,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) 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 act in accordance as noted above; as a result, I find that the landlord is entitled to \$1350.00.

Rental Difference \$550.00

The landlord rented the unit for \$50.00 less per month for the balance of the term which was ten months. The landlord incorrectly submitted a claim for 11 months. I do find that the landlord acted responsibly and mitigated their loss as required under section 7(2) of the act, accordingly; I find that the landlord is entitled to \$500.00.

Dishonored Cheque - \$7.50

The landlord provided documentation to show she incurred a bank charge for this claim. I find that the landlord is entitled to \$7.50.

Bylaw fines \$2600.00

The landlord testified that the tenant may be the subject of many fines and that she could be subject to the maximum fine of \$2600.00 because of the tenant. The landlord advised that she has not paid any fines at this point. I find that the landlord is premature

in this portion of her application as she has not paid anything at this time, as well; the tenant has filed a complaint to challenge these fines. Based on the premature nature of this claim, I dismiss this portion of the landlords' application with leave to reapply if necessary.

Canada Post \$23.90 and Filing Fee \$100.00 –

Section 72 prescribes that the only hearing related costs a party may claim is the filing fee. As a result, I dismiss the landlords claim for \$23.90 for registered mail costs but do grant the landlord \$100.00 for the recovery of the filing fee for being partially successful in this application.

### Conclusion

The landlord has established a claim for \$1957.50. I grant the landlord an order under section 67 for the balance due of \$1957.50. This order may be filed in the Small Claims 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: February 01, 2019

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Residential Tenancy Branch