



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD, 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit 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 parties acknowledged receipt of evidence submitted by the other.

### Issue to be Decided

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

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?

Is the tenant entitled to the return of the security deposit?

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

### Background, Evidence

The landlord gave the following testimony. The one year fixed term tenancy began on February 1, 2018 but ended early on September 28, 2018. The tenant was obligated to pay \$1090.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$545.00 security deposit. The landlord testified that they had a clause in their tenancy agreement that the tenant must give three months' notice to end a tenancy to avoid a three month penalty if they wish to end the tenancy early. The landlord testified that the tenant gave him notice to move out on September 1, 2018 for a September 30, 2018 move out date. The landlord testified that the tenant refused to pay the rent and that he left the unit dirty with damage to the electric base board heater.

The landlord is applying for the following:

1.	Breach of Contract Penalty	\$3270.00
2.	Unpaid Rent September	1090.00
3.	Cleaning	400.00
4.	Electrical Repair	210.00
5.	Filing Fee	100.00
6.		
	Total	<b>\$5070.00</b>

The tenant gave the following testimony. The tenant testified that the landlord has not been truthful in this hearing. The tenant testified that he did clean the suite and that he did pay the rent for September 2018. The tenant testified that the landlord refused to give him a copy of the move in/out condition inspection report. The tenant testified that he did not agree to any of the claims made by the landlord and that he signed and noted that on the move out report, however; the copy the landlord submitted for this hearing is unsigned and has been altered to the landlords benefit. The tenant testified that he is waiving the doubling provision under the Act and seeks the return of his security deposit and the recovery of the filing fee for a total claim of \$650.00.

## 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 each party's claim and my findings around each are set out below.

Firstly, I deal with the landlords claim.

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.

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3 Month Penalty for breaking the contract – \$3270.00

The tenant testified that the landlord approached him about moving out and asked if he could move out by the end of September to which the tenant agreed. The landlord testified that he re-rented the unit for October 1, 2018 and did not suffer any loss, Residential Tenancy Policy Guideline 8 addresses the issue before me as follows:

8. Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable<sup>1</sup>. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

In the landlords own testimony he constantly referred to this claim as a penalty and that he did not suffer any rental loss, accordingly; I find it to be unconscionable and therefore unenforceable. I dismiss this portion of the landlords claim.

Unpaid Rent - \$1090.00

The landlord did not provide sufficient documentation to support this claim. The landlord did not make any notations or issue any notice for unpaid rent. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Cleaning - \$400.00

The tenant challenged the validity of the move out condition inspection report and that he was never provided a copy of it. The landlord did not dispute the tenants' statement that he was not provided a copy of the report. The landlord did not provide any other supporting documentation such as photos or statements by cleaners or third party to confirm his version of the condition of the unit. Based on the insufficient evidence before me, I must dismiss this portion of the landlords' application.

Electrical Repair \$210.00

The tenant denies damaging the electric base board heater. The landlord has not provided sufficient evidence to show that the tenant damaged the baseboard through reckless or negligent behaviour. As noted above, a party must satisfy all four factors when making a claim, as the landlord has not done that, I dismiss this portion of their claim.

The landlord has not been successful in his application. His application is dismissed in its entirety without leave to reapply.

The tenant specifically waived any claim to the doubling provision therefore I need not consider whether it applies. The tenant is entitled to the return of his security deposit along with the recovery of the \$100.00 filing fee for a total award of \$650.00.

Conclusion

The tenant has established a claim for \$650.00. I grant the tenant an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety 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: February 07, 2019

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Residential Tenancy Branch