



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

MNR-S, FF

### 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed the tenant served a late evidence package to the landlord. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Discussions during the hearing with both parties revealed that the landlord submitted an evidence package with an incomplete amendment to the application for dispute. As such, the landlord's monetary claim shall proceed on the original application for unpaid rent/utilities, recovery of the filing fee and to offset these claims against a security and pet damage deposit held for \$3,931.98.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2018 on a 1 year fixed term ending on April 30, 2019 as per the submitted copy of the signed tenancy agreement dated February 1, 2018. The monthly rent was \$2,750.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,375.00 and a pet damage deposit of \$250.00 were paid.

The landlord seeks a monetary claim of \$3,931.98 for:

\$2,725.00	Unpaid Rent,
\$616.98	Unpaid Utilities, Water
\$90.00	Estimated, water utilities owed
\$300.00	Liquidated Damages,

The landlord claims that the tenant breached the signed tenancy agreement by giving notice to end the tenancy on October 31, 2018. The landlord stated that the tenants had advised that they were forwarding the mail to their current address. The landlord claims that a new tenant was not found until February 22, 2019.

In support of these claims, the landlord has submitted:

Copy of signed tenancy agreement dated February 1, 2018  
Copy of completed condition inspection report, move-in and move-out  
Copy of email from tenant, M.W. notice vacate dated September 30, 2018 for October 31, 2018 received on October 5, 2018.

The tenant provided affirmed testimony that he was not disputing the first 3 items of the landlord's claims for:

\$2,725.00	Unpaid Rent,
\$616.98	Unpaid Utilities, Water
\$90.00	Estimated, water utilities owed

As such, these portions of the landlord's claim has been successful. The tenant disputes only the claim for liquidated damages of \$300.00.

The landlord seeks compensation of \$300.00 for a liquidated damages clause as listed in the signed tenancy agreement. Both parties confirmed that the tenancy agreement contains a clause allowing for the landlord compensation of \$500.00 if the tenants were to pre-maturely end the fixed term tenancy. The landlord clarified that the liquidated damages of \$300.00 was a clerical error and should have been \$500.00, but will limit their claim to the applied amount of \$300.00.

The tenant argues that the landlord breached the tenancy agreement as per a verbal agreement made at the start of the tenancy for the landlord to remove the rental property from a sales listing. Both parties agreed that the landlord had unlisted the rental property for sale. Both parties agreed that the rental property was later re-listed for sale some 5 months later. The landlord argued that the listing had no effect on the tenancy as the tenants upon learning of the listing gave notice to end the tenancy.

### 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/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 tenants have confirmed their acceptance of the landlord's monetary claim for:

\$2,725.00	Unpaid Rent,
\$616.98	Unpaid Utilities, Water
\$90.00	Estimated, water utilities owed

The total is \$3,431.98. The tenant has disputed the remaining item of claim for \$300.00 regarding liquidated damages. The tenants have claimed that the landlord breached the tenancy agreement by listing the rental unit for sale which caused them to vacate

the rental property pre-maturely. In this case, I accept the undisputed testimony of both parties and find that the landlord has established a claim for liquidated damages of \$300.00. Both parties confirmed that there is a liquidated damage clause agreed to at the start of the tenancy for \$500.00, a verbal agreement had been made that the landlord un-list the rental property at the start of the tenancy. Both parties confirmed that the landlord re-listed the rental property for sale some 5 months later. Although the tenants have been successful in providing evidence that an agreement had been made to un-list the rental property for sale, both parties confirmed that there was no effect on the tenants for the listing(no loss of impact). Both parties confirmed that the tenants gave notice to end the tenancy and vacated the rental property on October 28, 2018.

The landlord has established a total monetary claim of \$3,931.98. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the combined \$1,625.00 security and pet damage deposits in partial satisfaction of this claim and grant a monetary order for the balance due of \$2,406.98.

### Conclusion

The landlord is granted a monetary order for \$2,406.98.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: March 11, 2019

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Residential Tenancy Branch