



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNR-S, FF, MNSD

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony.

### Preliminary Issue(s)

At the outset, both parties confirmed that the landlord served the tenant with the notice of hearing package and the first documentary evidence package via Canada Post Registered Mail. Both parties also confirmed that the landlord served the tenant with the amendment to the application for dispute and a second documentary evidence package via Canada Post Registered Mail, but was returned as moved or return to sender. The tenant confirmed that she had moved and changed addresses without

filing a change of address notification to the Residential Tenancy Branch and the landlord for the landlord's application.

Both parties confirmed that the tenant served the landlord with her notice of hearing package by Canada Post Registered Mail. Both parties also confirmed that the tenant served the landlord with her amendment to the application and her documentary evidence via Canada Post Registered Mail on October 12, 2018 and then filing it with the Residential Tenancy Branch on October 18, 2018.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act with each other's notice of hearing package(s) and the submitted documentary evidence. Although the tenant did not receive the landlord's amendment application increasing the monetary claim to \$2,569.41, I find that this is through no fault of the landlord. The tenant also failed to submit a change of address in a timely manner to allow the landlord an opportunity to properly serve the tenant with the amendment and the second documentary evidence package. As such, the tenant is deemed served with the landlord's original application, amendment to the application and the two documentary evidence packages.

Extensive discussions with both parties clarified that the landlord's monetary claim is for \$2,069.41. This is based upon an initial \$1,000.00 claim for unpaid rent and \$1,069.41 as detailed on the landlord's monetary worksheet dated October 16, 2018.

Due to extensive discussions taking up 60 minutes of hearing time, the hearing must be adjourned for continuation. The adjournment process was explained to both parties and both parties were cautioned that no new evidence was to be submitted, nor would it be accepted. A notice of an adjournment shall be attached to this interim decision detailing the time and date of the adjournment.

On March 1, 2019 the hearing was reconvened with both parties present. Both parties made submissions and provided evidence.

#### Issue(s) to be Decided

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

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

Is the tenant entitled to a monetary order for money owed or compensation and return 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 1, 2017 on a month-to-month basis as per a signed tenancy agreement. Both parties confirmed the monthly rent was \$1,500.00 payable on the last day of each month for the next month ahead. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid on November 7, 2017. No condition inspection report(s) for the move-in or the move-out were completed by both parties.

The landlord seeks an amended monetary claim of \$2,069.41 which consists of:

\$12.99	Drapes
\$24.97	Curtains
\$20.84	Painting Supplies
\$134.60	Paint/Supplies
\$57.04	Cleaning Supplies
\$12.55	Registered Mail
\$181.42	New Locks
\$105.00	Carpet Cleaning
\$520.00	Cleaning, Painting, Removing Garbage, Repairs, Dump Run
\$1,069.41	Sub-total
\$1,000.00	Unpaid Rent, April 2018
\$2,069.41	Total

The landlord claims that the tenant vacated the rental premises on April 30, 2018 without notice leaving it dirty and damaged. The landlord stated that garbage was left throughout the property and that the tenant failed to adequately clean the rental premises. The landlord also stated that there was damage to a door, door frame, a window sill, a stove top burner and that a provided vacuum was missing.

The landlord stated that extensive cleaning was required, the removal of garbage, repair to walls and painting, replacement of drapes, curtain rods and replacement of the locks as the tenant failed to return the keys to the rental premises. In support of these claims the landlord has provided:

12 photographs showing the condition of the rental unit at the end of tenancy  
Photograph of incomplete condition inspection report for the move-out  
Photograph of typed undated/signed invoice for cleaning and repairs, \$520.00  
Photograph of receipt dated April 13, 2018 for new lock, \$181.42

The tenant disputes the landlord's claim stating that notice was provided to the landlord in a text message on April 24, 2018, but confirmed that she had vacated on April 30, 2018 and that April 2018 rent was not paid. The tenant disputed the landlord's claims stating that the doorway was damaged prior to her tenancy beginning. The tenant confirmed that the rental premises was left with a dirty toilet and stove. The tenant confirmed that she did put on a new lock on the door without providing the landlord with a key. The tenant disputed the landlord's claims regarding the carport being left dirty requiring cleaning.

The tenant seeks a monetary claim of \$35,000.00 which consists of:

\$150.00	Cleaning at beginning of tenancy, 5 hours
\$500.00	Work missed due to being sick, February 28
\$350.00	Cancelled Clients due to landlord entering unit, April 17
\$600.00	No internet, loss of income, April 18/19
\$350.00	Moving costs
\$69.23	U-Haul
\$24.00	Registered Mail
\$350.00	Full Moon Circle, April 30 Cancelled
\$1,500.00	New home
\$1,000.00	Security Deposit
\$10,000.00	Loss of Income, Moving
\$22,000.00	Loss of
\$270.00	Hydro
\$420.00	WI-Fi
\$4,500.00	Creating paperwork for application

It was clarified with both parties that the tenant's monetary claim of \$42,083.22 although applied for, were informed during the hearing that the tenant's claim is limited to \$35,000.00 as per the Residential Tenancy Act monetary limitations.

The tenant claims that the beginning of the tenancy, the rental unit was provided dirty which required cleaning and seeks \$150.00 in cleaning costs at \$30.00 per hour for 5

hours. The tenant stated that she missed work due to being sick on February 28 due to stress. The tenant stated that she suffered a loss of income due to the landlord entering the rental unit on April 17 and had to cancel clients for a loss of \$350.00. The tenant seeks \$600.00 for the internet being turned off and had suffered a work loss because of no internet. The tenant seeks \$350.00 for moving costs, which the tenant was owed to M.K., but confirmed that no payment has been made nor any details provided. The tenant clarified that the landlord had asked her to move for which she complied. The tenant seeks the cost of a U-Haul rental, but has not provided any details or proof of this expense. The tenant's clarified that claims for items #7 and #8 of page 1 of the tenant's monetary claim (\$150.00/hr for 8 months plus and \$250.00 /hr for 8 months plus) were duplicates to items #1 to #3 of page 3 of the monetary worksheet for \$22,000.00 in loss of wages. The tenant was unable to provide sufficient details of these items of claim stating that they could be provided at a later time. The tenant seeks gas/maintenance/parking costs, but did not provide an amount or any details of these claims only stating that they could be provided at a later time. The tenant seeks the cost for the difference in a rental increase of \$1,500.00 in her new tenancy. The tenant states she is paying an additional \$250.00 in rent, \$65.00 for internet over a 6 month period and an additional \$30.00 for hydro. The tenant also seeks \$270.00 for hydro costs and internet costs for an additional 6 month period for her new tenancy which she claims was incurred because the tenancy ended. The tenant clarified that these costs would not have been incurred as they were previously included in her tenancy agreement.

The landlord disputes all of the tenant's claims stating that there is no basis for these claims. The landlord provided affirmed testimony that at the beginning of the tenancy, the tenant was compensated \$25.00 for the condition of the rental unit for cleaning. The tenant confirmed in her direct testimony that she did accept the compensation at the time and made no further issues of the cleaning issue.

The landlord disputes the tenant's claims stating that the tenant has failed to provide any details of these losses, proof of an actual loss or that these losses occurred as a result of the landlord's actions or neglect. The landlord argued that this was a residential tenancy agreement and not tenancy for a business and as such, the landlord should not be responsible for the tenant's business issues. The landlord also stated that the tenant had vacated as a result of a proper notice to end tenancy and that moving costs in or out are not the responsibility of the landlord. The landlord argued that any living costs are not the responsibility of the landlord that the tenant incurs in a new tenancy at her choice and that these are all new expenses chosen by and incurred by the tenant.

### 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.

During the hearing it was clarified with both parties that claims for recovery of litigation costs were not recoverable under the *Act*. Section 72 of the *Act* addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the claims for recovery of litigation costs are dismissed for both parties.

In this case, the landlord seeks a monetary claim for money owed or compensation for damage or loss of \$2,056.86. I accept the evidence of both parties and find on a balance of probabilities that the landlord has established a claim for unpaid rent of \$1,000.00, general cleaning of \$57.04 and the cost of new locks of \$181.47. In these claims, the tenant confirmed in her direct testimony that no rent was paid for April 2018, notice to end the tenancy was given to the landlord via text message on April 28, 2018 for April 30, 2018. The tenant also confirmed that a new lock was placed on the door without giving the landlord a key and that the toilet and stove were left dirty at the end of tenancy. On this basis, I find that the landlord has established a claim for the above noted claims of unpaid rent, cost of cleaning supplies and the cost of a new lock for a total monetary claim of \$1,238.51.

The landlord's remaining items of claim are dismissed. In these claims, the tenant has disputed them. The tenant has argued that there was no damage to the drapes, curtain rod and that the wall damage claimed by the landlord was present at the start of the tenancy. The landlord failed to have a condition inspection report completed by both parties on the move-in or the move-out. The landlord relies solely on photographic evidence taken at the end of tenancy and that there is no conclusive evidence provided to show a comparison of the condition of the unit before and after the tenancy began.

On the tenant's monetary claim of \$35,000.00, I find that the tenant has failed to establish a claim for any save the return of the \$1,000.00 combined security and pet damage deposits. Extensive discussions by the tenant revealed that the tenant seeks monetary compensation primarily for the loss of wages/salary. Repeated discussion with the tenant failed to yield any details from the tenant for these claims, save that evidence of these losses could be submitted at a later time. The tenant provided insufficient evidence of any actual losses or evidence that this was attributed to the landlord through her actions or neglect. The remaining portions of the tenant's claims are for moving costs, incurred internet/hydro costs which the tenant attributed to the responsibility of the landlord. The tenant repeated claimed that pain and suffering was caused by the landlord, but that the tenant failed to provide sufficient evidence of these claims during the tenancy and well after into her new tenancy as the costs were sought. I also note as argued by the landlord that these claims are in conflict with the landlord's undisputed evidence that the tenancy ended as result of a notice to end tenancy and that the items listed were for after the tenancy ended.

The landlord has established a total monetary claim of \$1,238.51. The landlord is also entitled to recovery of the \$100.00 filing fee. The tenant has established a total monetary claim of \$1,000.00. In offsetting these claims, I grant the landlord a monetary order for the difference of \$338.51.

### Conclusion

The landlord is granted a monetary order for \$338.51.

This order must be served upon the tenant. Should the tenant fail to comply with the 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 26, 2019

---

Residential Tenancy Branch