



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This decision is about a tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks compensation under section 67 of the Act for, as stated in her application, "re. 1200 for month of November 01 to 30 2018".

A dispute resolution hearing was convened on March 22, 2019 and tenant attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenant testified that she served the landlord with the Notice of Dispute Resolution Proceeding package on November 23, 2018, in-person. I find that the landlord was served in compliance with section 89 of the Act.

I have reviewed and considered all oral evidence relevant to the issue of this application. No documentary evidence was submitted, though the tenant said that she had dropped off evidence at the Residential Tenancy Branch. The tenant did not appear to try to confirm that such evidence had, in fact, been accepted or received by the Residential Tenancy Branch, and there is no information on the file to indicate that evidence was ever submitted.

### Issue to be Decided

Is the tenant entitled to compensation in the amount of \$1,200.00?

### Background and Evidence

The tenant testified that the tenancy began, and ended, on November 1, 2018. Monthly rent was \$1,200.00, and there was a security deposit of \$600.00. The landlord returned the security deposit. The parties signed a tenancy agreement, which was for a month-to-month tenancy.

When she attended to the rental unit on November 1, she found that the heat was not working, the stove blew out, was dirty, and the carpets were dirty. In addition, the circuit breaker panel had no cover. After viewing the rental unit, she gave the landlord written notice that she would be ending the tenancy there and then. The tenant never moved into the rental unit. Later, she discovered that new tenants had moved in, on or after November 10, 2018.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenant has not established, on a balance of probabilities, that the landlord failed to comply with the Act, the regulations, or the tenancy agreement. While the tenant did testify that the stove had a problem blowing out (how she could have

discovered this in such a short of time defies logic), there is no documentary or photographic evidence establishing *how* dirty the carpets were, or, where the circuit breaker box was in relation to the rental unit. There were no photographs or other forms of evidence that might have assisted me in this regard.

Section 32(1) of the Act states that

A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Without any evidence other than the tenant's oral testimony, I cannot find that the landlord breached section 32(1) of the Act which may have given rise to a compensable claim under the Act.

Regarding the new tenants moving in, I have no evidence beyond the testimony of the tenant as to when, exactly they moved in, and no evidence of what their rent was. In other words, I have no documentary evidence to establish whether the landlord was, to use the vernacular, double dipping.

Taking into consideration the oral testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving the first part of the four-part test, namely, that the landlord breached the Act. As this first criterion was not met I need not consider the remaining three criteria.

Even if I had found that the landlord breached the Act, I note that the tenant did not provide notice to end the tenancy that complied with the Act. Section 45(1) of the Act states that

A tenant may end a periodic [monthly] 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, and

(b) 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.

In this case, the tenant gave written notice on the very first day of the tenancy to end the tenancy on the last day of that month. That is, the tenant's notice did not comply with the requirements for providing notice under the Act.

Conclusion

I dismiss the tenant's application 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 Act.

Dated: March 22, 2019

---

Residential Tenancy Branch