



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFL MNDCL MNDL MNRL MNSD

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid rent and utilities, damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

### **Issue(s) to be Decided**

Are the tenants entitled to return of his security deposit?

Is the landlord entitled to a monetary order for unpaid rent or compensation for losses that they have applied for?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on May 1, 2018, and was to end on April 30, 2019. Monthly rent was set at \$2,300.00, payable on the 30th of the month. The tenants testified that they had paid a security deposit in the amount of \$1,150.00, which the landlord disputes. The tenants moved out on July 15, 2018, and provided a forwarding address to the landlord on July 27, 2018. A copy of the tenancy agreement was provided for this hearing which states that a security deposit of \$1,150.00 was to be paid by April 29, 2018.

The tenants applied for the return of their security deposit plus compensation for the landlord's failure to comply with section 38 of the *Act*. The tenants testified that they paid the security deposit before receiving the keys from the landlord. The tenants testified that a receipt was provided, but they could no longer access that receipt as it was provided through an online service. LF testified that she was the tenant's mother, and that her daughter had asked her to help her print the receipt. LF also testified that the rabbit referenced in this dispute belongs to her, and that she had stayed with her daughter during the last week of the tenancy due to safety concerns, and had brought along her rabbit. LF testified that the home contained a lot of garbage that did not belong to her daughter.

The landlord is seeking a Monetary Order for \$13,557.00 as outlined in the table below and in the landlord's Application:

<b>Item</b>	<b>Amount</b>
Rent Arrears (6.5 months)	\$10,350.00
Unpaid Utilities	929.46
Damage	2,227.81
<b>Total Monetary Order Requested</b>	<b>\$13,557.00</b>

The landlord is seeking rent in the amount of \$10,350.00 as this tenancy ended before the end of the fixed term. The landlord testified that tenants had paid rent for May and June 2018, but was seeking a further 6.5 months of lost rental income. The landlord indicated that he was able to re-rent the unit for November 15, 2018 for the same monthly rent of \$2,300.00.

The landlord testified that the tenants left a considerable amount of damage, and the landlord submitted receipts to support his losses. The landlord is seeking \$2,227.81 for these damages left by the tenants. The landlord testified that the tenants had changed the locks, damaged the blinds, heaters, plumbing, and carpet. The landlord provided invoices, receipts, photos, and an inspection report. The landlord testified that the tenants did not attend the move-out inspection. The landlord testified that the home was built in 1960, but the flooring was updated in 2016.

The landlord is also seeking a monetary order for unpaid utilities as the tenants did not pay the utilities as agreed on for this tenancy. The landlord attached invoices, and stated that he is seeking 6.5 months of utilities.

### **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 or 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 onus is on both applicants to prove, on a balance of probabilities that the other party had failed to comply with the *Act* and tenancy agreement, which contributed to the loss claimed.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit

(section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that there was conflicting testimony as to whether the security deposit was paid by the tenants. The tenants testified that they had paid, and were issued a receipt for that payment, which they can no longer access. I am not satisfied that the tenants had provided sufficient evidence to support the payment of the security deposit to the landlord, and accordingly I dismiss the tenant's application under section 38 of the *Act* with leave to reapply.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*
- (c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

The landlord provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. The tenants had filed an application for dispute resolution disputing the landlord's 10 Day Notice, but had moved out prior to the hearing date set for November 2, 2018.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite as of November 15, 2018, for the same monthly rent, however I am not satisfied that the landlord had provided sufficient evidence to support his efforts to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord partial compensation for the early end of this tenancy, but not the 6.5 months of rent requested by the landlord. I find that the landlord lost 4.5 months of rent due to the early end of this tenancy, and as the landlord did not provide sufficient evidence to support that he had mitigated the tenants' exposure to his rental losses, I allow the landlord partial compensation equivalent to 2 months' rent. The landlord is granted \$4,600.00 in compensation for the early end of this fixed term tenancy.

The landlord also applied for 6.5 months of utilities. The landlord provided copies of the municipal utility bills in his evidence. I find that the landlord has not provided sufficient evidence to show why the tenants are responsible the utility statements for the period after this tenancy had ended. The landlord stated in his application that the tenant had never paid since moving in, while the previous decision by the Arbitrator dated November 5, 2018 contains conflicting evidence that the tenant had paid the hydro bill for this tenancy, which the Arbitrator had granted the tenant reimbursement for. I am not satisfied that the landlord had provided sufficient evidence to support his claim of unpaid utilities, and I dismiss this portion of the landlord's claim without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties.

The landlord's claim for damages includes the cost of new locks as the landlord testified that the tenants had changed the locks, and did not give the landlord keys for these locks.

Section 25(1) of the *Act* addresses the issue of new locks.

### **Rekeying locks for new tenants**

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
  - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

The landlord applied for the cost of new locks, as they did receive not all the keys from the tenants. As stated in section 25(1) of the *Act*, the responsibility of providing a new lock at the start of the new tenancy falls on the landlord, and therefore the cost of rekeying is the obligation of the landlord, and not the previous tenants. On this basis, I dismiss the landlord's application for compensation for the rekeying of the locks.

Despite the fact that there was damage to the rental unit, I find that the tenants disputed the landlord's claims that they had caused this damage. The landlord's monetary claim includes the blockage of pipes, as well as damage to the blinds and heaters. I find that the landlord has not provided sufficient evidence to support that the tenants had caused this damage, and accordingly I dismiss the landlord's monetary claim for damages without leave to reapply.

The landlord also filed an application for cleaning at the end of this tenancy. I find that the landlord provided sufficient evidentiary evidence to support that the tenants failed to leave the rental unit in reasonably clean condition, and accordingly I allow the landlord a monetary claim for cleaning in the amount of \$319.00 and garbage removal in the amount of \$485.00 as supported by the receipts submitted in evidence.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

### **Conclusion**

I dismiss the tenants' application with leave to reapply.

I issue a \$5,454.00 Monetary Order in favour of the landlord as set out in the table below. The remainder of the landlord's application is dismissed without leave to reapply.

<b>Item</b>	<b>Amount</b>
Loss of Rental Income (2 months)	\$4,600.00
Partial Recovery of Filing Fee	50.00
Reimbursement for Cleaning	319.00
Reimbursement for Garbage Removal	485.00
<b>Total Monetary Order</b>	<b>\$5,454.00</b>

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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 27, 2019

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Residential Tenancy Branch