



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND-S, FF, MT, CNC, ERP, MNDC

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 22, 2018. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence. Neither party raised any

issues with service. 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.

Preliminary Issue(s)

In the interim decision, the tenant's request for more time to make an application was dismissed and the hearing was commenced. In the interim decision dated August 27, 2018 the landlords were granted an order of possession effective 2 days after service.

The hearing was adjourned due to a lack of time and is to be reconvened to resolve the remaining issues of the landlords' and the tenant's monetary claims.

At the outset of the adjournment on November 26, 2018 the tenant's request for an order for emergency repairs was dismissed as the tenancy has ended as per the order of possession granted on August 27, 2018. The hearing was resumed with both parties. The landlords' amendment was clarified in that the landlords sought inclusion of a request to retain the security deposit to offset the landlords claim if successful. Both parties were informed that the landlords had already made application in the original claim filed June 19, 2018 and as such this was not required.

Due to extensive discussions and difficulties by both parties in navigating through the evidence submissions of both parties, the hearing was adjourned after 62 minutes. Both parties were advised that a new notice of an adjournment hearing would be sent to each parties those addresses confirmed in their direct testimony. The tenant provided an updated mailing address to the noted PO Box.

On January 17, 2019, the hearing was resumed with both parties. Extensive discussions with both parties prevented the hearing from being completed after 143 minutes. Initially both parties were advised during the hearing led to a decision to adjourn the hearing and have an alternative Arbitrator re-start the hearing regarding the monetary claims. After deliberating on this issue, I find that I am seized of this matter as submissions regarding the landlord's claim have already begun from both parties. Both parties were advised of Residential Tenancy Branch Rules of Procedure, Rule 6.3 pertaining to the format of a dispute resolution hearing states in part that a dispute resolution hearing may be held by telephone conference call; in person; in writing; by video conference call or other electronic means; or any combination of the above at the discretion of the Residential Tenancy Branch. In this case, I find that as the hearing cannot be completed efficiently via telephone conference call, the hearing shall proceed in writing.

An order was given for both parties to submit written submissions regarding the landlord's monetary claim and the tenant's monetary claim, to include any relevant witness statements for those claims already filed before me. These written submissions should be submitted no later than March 1, 2019 to the Residential Tenancy Branch for consideration. Failure to do so will result in the decision being made in the absence of these submissions. At which time, I will review any additional written submissions and already submitted documentary evidence to render a decision in writing.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage(s) and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Is the tenant entitled to an order for emergency repairs?

Is the tenant entitled to a monetary claim for money owed or compensation for damage or loss?

#### 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 January 30, 2018 on a fixed term tenancy ending on June 29, 2018 as per the submitted copy of the signed tenancy agreement dated January 15, 2018. The monthly rent is \$1,900.00 payable on the 30<sup>th</sup> day of each month. A security deposit of \$950.00 was paid on January 15, 2018.

The landlords seek a monetary claim of \$5,617.50 for estimated repair work for damaged caused by the tenant. The landlords claim that the tenant caused extensive damage to the rental unit that is not normal wear and tear based upon a professional evaluation for a short duration. The landlord has submitted a monetary worksheet which references a work estimate for repairs. The work estimate details 21 items for repairs in which item # 1,2,4,5,8,9,10,11,12 and 20 which were completed. The landlord also stated that item #19 was partially completed. The landlord stated that the remaining item #'s were not completed and the work was paid via e-transfer for which no invoice was issued. The landlord provided no evidence regarding the e-transfer payment.

The tenant disputed the landlord's monetary claim.

The landlord submitted photographs taken of the rental unit of before and after this tenancy began. The landlord indicated that the rental unit was painted in January 2018. A copy of a condition inspection report for the move-in dated January 1, 2018 was provided. No condition inspection report for the move-out was completed by both parties.

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

\$14,000.00	Health Claim, \$2,000.00/person
\$35,000.00	Harassment/Personal Safety, \$5,000.00/person
\$30,000.00	300 hours Prep. Documents, \$100.00/hour
\$275.00	supplies
\$640.00	cost of supplies
\$103.00	Registered Mail
\$0	Damage to Personal Property
\$1,500.00	Jackets
\$200.00	suitcase
\$3,000.00	clothing
\$2,000.00	child clothing
\$2,000.00	cleaning supplies
\$2,160.00	mold cleaning
\$7,000.00	loss of use, \$1,000.00/month
\$200.00	Dehumidifier
\$300.00	extra hydro
\$500.00	travel costs
\$55.00	storage bins

Extensive discussions with both parties clarified that the total amount filed does not equal the total amount detailed above. The total amount as per the submitted monetary claim based upon the tenant's monetary worksheet is \$98,933.00. The tenant provided extensive discussions on the items of claim, but did not provide any invoices/receipts for these claims in any of the 50 pages of documents submitted for the monetary claims. The tenant has also made submissions for claims not in the original monetary claim, specifically the "cost of eviction" for \$7,107.58, "Damage to personal property" for \$4,200.00, "Health Issues" for \$12,000.00, "Loss of Use" for \$1,400.00. These items listed in her written submissions have not been clarified by the tenant and a review of

the material does not reveal any clarity. A review of the tenant's written submissions show the total amount sought is \$86,557.58.

### 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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the landlord's monetary claim, I find that the landlord has failed to provide sufficient evidence to establish a claim for the \$5,617.50 sought. The landlord provided evidence of damage/loss in the form of a completed condition inspection report for the move-in in comparison with a typed statement dated June 10, 2018. However, the statement by the contractor only notes that damage seen was not that of normal wear and tear. The primary content of the statement described the contractor's observations of the tenant instead during this time. The landlord relies solely on a "work estimate" for work which was not completed by the contractor. The landlord stated that "the work estimate details 21 items for repairs in which item # 1,2,4,5,8,9,10,11,12 and 20 which were completed. The landlord also stated that item #19 was partially completed." The landlord also stated that payment was made via e-transfer for which no paid invoice was made or provided. As such, the landlord has failed to provide sufficient proof of all of the 4 elements required to satisfy me on this claim. The landlord's monetary claim is dismissed.

As for the tenant's monetary claim, I find that the tenant's claim has failed. The tenant has provided in her original monetary claim an amount filed of \$98,933.00. The tenant later also provided written submissions on these same items of claim for a total of \$86,557.58. The written submissions on the tenant's monetary claim do not address many of the items listed on the tenant's monetary worksheet. The written submissions also refer to claims not made in the original monetary claim filed as per the submitted monetary worksheet. The tenant has not provided any basis for these amounts in the

form of any invoices/receipts. The tenant has also failed to provide sufficient evidence that the damage or loss occurred as a result of the actions or neglect of the landlords. On this basis, the tenant's application is dismissed.

I note that the tenant's written submission on the monetary claim include a request for return of double the security deposit which was not included in the original application. As such, this portion of the written requests needs to be addressed as per section 38 of the Act in a separate application as these monetary claims in this application were filed prior to the end of tenancy.

### Conclusion

The landlord's monetary claim is dismissed without leave to reapply.  
The tenant's monetary claim is dismissed 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: April 17, 2019

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Residential Tenancy Branch