



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S MNRL-S FFL

### Introduction

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

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant G.D. attended and spoke on behalf of the tenants. Landlord's assistant M.P. attended with the landlord to assist him.

As both parties were present, service of documents was confirmed. The tenant testified that they were in receipt of the Notice of Dispute Resolution Proceeding package which was passed along to the tenants on November 17, 2018. The landlord testified that they personally delivered their evidence to tenant V.D. at the tenants' home on March 2, 2019. Tenant G.D. denied receipt of the landlord's evidence. Tenant V.D. was not in attendance to provide first-hand testimony on the receipt of evidence. However, I note that the tenants submitted evidence to the Residential Tenancy Branch on March 6, 2019, in which they refer to the landlord's evidence, as follows:

*“...He never told us about damage until he lost his case in RTB. He did not give us any evidence of damage till then today...”*

[as written]

As such, I prefer the landlord's first-hand testimony on this point, as I find on a balance of probabilities that the tenants did receive the landlord's evidence. Therefore, I have considered the landlord's evidence in this matter.

The landlord made no objection to the admission of the tenants' evidence. Therefore, I find that both parties were sufficiently served with the documents for this hearing pursuant to section 71(2)(c) of the *Act*.

#### Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the parties confirmed that a prior arbitration decision dated November 1, 2018 (file number noted on the cover sheet of this decision) had ordered that the landlord return the security deposit to the tenants. Therefore, I explained to the landlord that he could no longer seek to retain the security deposit in full or partial satisfaction of his claims in this hearing. I further explained that in this hearing, I would only be determining if any compensation was owed to the landlord and I would not be making any determinations regarding the security deposit as that matter had already been adjudicated.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

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 and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

I note that the parties have an acrimonious and bitter relationship, no doubt bolstered by the fact that this is their second arbitration hearing between them. The tenant G.D. was loud and verbally berating to the landlord, calling him a “liar” repeatedly during the

teleconference for this hearing. I cautioned the tenant several times during the hearing to refrain from speaking over the landlord, to no avail. As a result, I had to mute the tenant's line during the hearing on three occasions in order to allow the landlord or myself to speak and be heard.

A written tenancy agreement was submitted into evidence. I note that the tenancy agreement was not fully completed, contained errors, nor was it signed or dated by the parties. However, the parties confirmed the following details pertaining to this tenancy:

- This tenancy began on August 15, 2017 as a fixed term which was scheduled to end on July 31, 2018, although the tenancy agreement contained a typographical error which provided an end date of July 31, 2017.
- Monthly rent was set at \$1,800.00. The tenancy agreement did not specify the day in the month rent was payable.
- At the beginning of the tenancy, the tenants paid a security deposit of \$900.00, which was ordered returned to the tenants through the prior arbitration decision.

The landlord's claim sought \$526.40 for a new stove. The landlord submitted a receipt for the purchase of the new stove, however the landlord failed to submit any evidence, such as a condition inspection report or photographic evidence to support his claim that the stove was damaged by the tenants. The tenant disputed the landlord's claim pertaining to damage to the stove.

The landlord claimed the tenants failed to pay an electricity bill for the period of April 17, 2018 to June 14, 2018 in the amount of \$128.42. The tenant first testified that they had already paid the bill, then changed her testimony to admit that they withheld payment of the electricity bill as they felt they had overpaid for the gas bill, and later again changed her testimony to state that they had never received the electricity bill from the landlord.

I find that the tenant's testimony regarding the electricity bill was inconsistent and therefore, I find her testimony unreliable. As such, I find that based on the testimony, on a balance of probabilities I prefer the landlord's testimony that the tenants failed to pay the electricity bill. However, I advised the landlord that any claim for electricity bill costs must be attributable to the tenants' usage during the time of their tenancy.

The landlord claimed that the tenants failed to vacate the rental unit until June 2 or 3, 2018. The tenants claimed that tenant G.D. was released from hospital on June 1, 2018 following the birth of their child and that their family helped them move on June 1, 2018. The landlord claimed that the tenants' failure to move out on May 31, 2018

resulted in the landlord being unable to rent out the unit to a new tenant on June 1, 2018, therefore resulting in a rental loss of one month's rent of \$1,800.00. The landlord testified that he became aware of the tenants' intention to move out of the rental unit in mid-May 2018. The landlord testified that he advertised the rental unit on an online classified website and posted a "for rent" sign at the rental property, however, the landlord failed to submit any evidence such as rental ads to demonstrate his efforts to find new tenants, or when he began advertising the rental unit for rent. The landlord confirmed that he found a new tenant to move into the rental unit beginning July 1, 2018, and that this new tenant viewed the rental property on June 12, 2018 and signed the tenancy agreement on June 23, 2018.

Both parties called witnesses to provide testimony regarding the tenants' vacancy date.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; **and**
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this matter, I must make a finding of fact regarding the date the tenants vacated the rental unit, as this fact is disputed by the parties.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events in another way, without further evidence the party with the burden of proof has not met the onus to prove their version of events. In this matter, the landlord bears the burden of proof as it is his claim.

In the case before me, despite the landlord's testimony that the tenants failed to vacate the rental unit until June 2 or 3, 2018, the landlord has not provided any corroborating evidence to confirm that the tenants were still present in the rental unit on those days. The landlord's witness could only testify that he moved into the rental unit on July 1, 2018. The tenants provided several written statements attesting to the tenants moving out on June 1, 2018, as well as their witness' testimony confirming June 1, 2018 as the tenants move out date. As a result, and because the tenants are disputing the landlords' version of events, I find that the landlord has failed to establish that the tenants were overholding in the rental unit until June 2 or June 3, 2018.

As such, I find that the tenants vacated the rental unit on June 1, 2018.

A tenant is expected to vacate a rental unit by 1:00 p.m. on the last day of the tenancy. In this case, the landlord has claimed rent owed for the month of June 2018 as the landlord claimed that the tenants overholding of the rental unit prevented the landlord from renting out the rental unit for June 1, 2018. A landlord is required to demonstrate that they made reasonable efforts to mitigate any claimed rental loss. I find that the landlord failed to submit any evidence to establish he made efforts to rent out the unit for June 1, 2018. Rather, the landlord submitted evidence that the rental unit was rented out for July 1, 2018.

Therefore, I find that the landlord is not entitled to claim for rent for the month of June 2018 as the landlord failed to establish he made reasonable efforts to rent out the unit, based on the testimony and evidence before me, on a balance of probabilities. As such, the landlord's claim for compensation for rental losses of \$1,800.00 is dismissed.

I have considered whether the landlord is entitled to compensation for overholding, if it can be determined that the tenant continued to occupy the rental unit after the tenancy ended, pursuant to section 57(3) of the *Act*.

In this matter, the landlord has failed to demonstrate due diligence in drafting the tenancy agreement as it is incomplete, contains errors, and is not signed or dated by either party. As such, I find that terms of the tenancy agreement are so unclear that a determination cannot be made on whether May 31, 2018 or June 1, 2018 was the last day of the tenancy.

Therefore, based on the evidence and testimony before me, and on a balance of probabilities, I find that the landlord failed to provide sufficient evidence to establish that the tenants were overholding by remaining in the rental unit until June 1, 2018. As such, I find the landlord is not entitled to any compensation for overholding by the tenants.

Regarding the landlord's claim of \$526.40 for the replacement of the stove, I find that the landlord failed to provide any evidence, such as a condition inspection report or photographic evidence to support the claim that the tenants damaged the stove, which was disputed by the tenants. Therefore, based on the evidence and testimony before me, and on a balance of probabilities, I find that the landlord failed to provide sufficient evidence to establish the existence of the damage to the stove or that the damage resulted directly from the tenants' misuse of the appliance. As such the landlord's claim is dismissed.

Based on the evidence and testimony before me, and on a balance of probabilities, I find that the landlord provided sufficient evidence to establish that the tenants failed to pay for electricity from April 17, 2018 until they vacated the rental unit. The tenants' testimony was unreliable but at one point the tenant admitted that they withheld payment of the electricity bill. The tenants had no evidence that they paid the bill. The landlord submitted the bill into evidence. Although the landlord is claiming costs from April 17, 2018 to June 14, 2018 (59 days), I find that the landlord is only entitled to hold the tenants responsible for the cost of electricity which they used during their tenancy. As I have made a finding that the tenancy ended on June 1, 2018, I have prorated the cost for the 46 days from April 17, 2018 to June 1, 2018. At a cost of \$2.1766 per day, I find that the landlord is entitled to \$100.12 (46 days x \$2.1766) for electricity used by the tenants and not paid for by the tenants.

As the landlord was successful in obtaining a monetary award against the tenants in this application, I find that the landlord is entitled to recover the \$100.00 cost of the filing fee for this application from the tenants.

In summary, I order a Monetary Order of \$200.12 in landlord's favour, as explained below:

<b>Item</b>	<b>Amount</b>
Electricity costs April 17 to June 1, 2018 (46 days)	\$100.12
Recovery of filing fee for this Application	+ \$100.00
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$200.12</b>

### Conclusion

I issue a Monetary Order in the landlord's favour against the tenants in the amount of \$200.12. 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.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible.

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 4, 2019

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Residential Tenancy Branch