



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC-S, MNR-S, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence on December 14, 2018 via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on March 20, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

During the hearing the landlord clarified that his monetary claim was for \$796.40 for unpaid rent of \$550.00 (1/2 monthly rent for November 15-30) and \$246.40 for smoke damage cleaning.

The landlord clarified that he has cancelled two items of claim for utilities of \$70.63 and 60.00 as listed as items #9 and #10 on the monetary worksheet completed for compensation. The landlord also clarified that the items listed as #1 to #7 for claims

regarding replacement or repairs were not incurred nor paid out. The landlord stated that the rental property was sold as is and that no repairs were made. The landlord also clarified during the hearing that the original monetary claim for unpaid rent of \$542.46 was due to an arithmetic error.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part 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 applicant's claim and my findings are set out below.

Both parties confirmed this tenancy began on July 1, 2017 on a month-to-month basis as per a signed tenancy agreement. The monthly rent was \$1,100.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$550.00 and a pet damage deposit of \$500.00 were paid.

The landlord seeks a clarified monetary claim of \$796.40 which consists of:

\$592.46	Unpaid Rent, November 15-30, 2018
\$246.40	Cleaning Costs, re: Smoke Damage

The landlord claims that the tenant failed to pay rent for the period November 15 to 30, 2018. Both parties confirmed that the tenant gave notice to end the tenancy on October 15, 2018 for November 15, 2018. The landlord claims that the tenant failed to provide proper 1 months notice.

The tenant argued that "30 days notice" was given on October 15, 2018 for which the tenant claims the landlord accepted. The landlord disputes this claim stating that he did receive the notice to end tenancy, but did not accept the tenant's claim that the tenancy would end on November 15, 2018. The tenant argued that he has proof in that following the email on October 15, 2018, the landlord confirmed receipt of the notice. The tenant claims this "receipt" was the same as the landlord accepting that the tenancy could end on November 15, 2018 instead of November 30, 2018.

The landlord also seeks recovery of cleaning costs due to smoke damage for \$246.40. The landlord has submitted a copy of an invoice dated December 22, 2018 for \$315.00. The tenant disputed the landlord's claim stating that there was no smoke damage caused by the tenant. The landlord was not able to provide any supporting evidence of smoke damage caused by the tenant during the tenancy.

### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find that the landlord has established a claim for unpaid rent of \$550.00. This is based upon the landlord's undisputed evidence that monthly rent is \$1,100.00 payable on the 1<sup>st</sup> day of each month. The landlord received the tenant's notice to end tenancy on October 15, 2018 for November 15, 2018. In reviewing the tenant's evidence that he claims the landlord accepted that the tenancy would end on November 15, 2018 instead of November 30, 2018, I find without sufficient evidence. The landlord had disputed the tenant's claim that the tenancy would end on November 15, 2018. The email referred to by the tenant is confirmation that the landlord received the tenant's notice, not an acceptance to ending the term of the tenancy. On this basis, the landlord has been successful for unpaid rent of \$550.00.

As for the landlord's monetary claim for cleaning costs for smoke damage, I find that the landlord has failed. Although the landlord has claimed that smoke damage occurred as a result of the tenant and that a copy of cleaning invoice for smoke damage was submitted, the tenant has disputed the landlord's claim. The landlord did not provide any supporting evidence that smoke damage had occurred or that it had resulted through the actions or neglect of the tenant. The landlord admitted that a condition inspection report for the move-in or the move-out were not completed by both parties which would have allowed for a direct comparison of the condition of the rental unit. On this basis, this portion of the landlord's claim is dismissed.

The landlord having been partially successful is only entitled to recovery of \$50.00 for the filing fee.

The landlord has established a total monetary claim of \$600.00.

As for the \$550.00 security deposit and the \$500.00 pet damage deposits, I authorize the landlord to retain \$600.00 in satisfaction of his claim. I order that the landlord return the balance due of \$450.00 to the tenant.

Conclusion

The tenant is granted a monetary order for \$450.00.

The landlord must be served with a copy of this order. Should the landlord 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: April 04, 2019

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Residential Tenancy Branch