



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR   ERP   MNDC   FF

### Introduction

This hearing was convened pursuant to an Application for Dispute Resolution made by the Tenant on February 21, 2019 (the “Application”). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 16, 2019 (the “10 Day Notice”);
- an order that the Landlord make emergency repairs for health or safety reasons;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was accompanied by T.S. and I.S., witnesses. All in attendance provided affirmed testimony.

The Tenant testified the Landlord was served with the Application package and documentary evidence by registered mail. The Landlord confirmed receipt. During the hearing, no issues were raised with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the Act, I find the Application package and documentary evidence were sufficiently served on the Landlord for the purposes of the Act.

The Landlord testified that the evidence he intended to rely upon was not served on the Tenant because the address for service provided by the Tenant was the dispute address, but she had vacated that address on or about March 5, 2019. Therefore, the documentary evidence submitted through the Service Portal has not been considered further in this decision.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties agreed during the hearing that the Tenant vacated the rental property on or about March 5, 2019. Therefore, it was not necessary for me to consider the Tenant's request for an order cancelling the 10 Day Notice or for an order that the Landlord complete emergency repairs. As a result, the only matters addressed during the hearing are described below.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on November 1, 2017, and ended on or about March 5, 2019. Rent in the amount of \$3,000.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,500.00, which the Landlord holds.

The Tenant claimed \$1,500.00 for damage to furniture and appliances she says was caused by rats. The Tenant testified that rats were first noticed in the rental unit in early 2018. Although she testified she did what she could to prevent them from entering, they reappeared in numbers in December 2018. She testified that "dozens" of rats entered her unit and chewed furniture and a refrigerator power cord. Photographic images of damaged furniture were submitted in support. In addition, the Tenant submitted a photograph of garbage on the floor near some plumbing.

In addition, the Tenant testified that the estimated value was based on online searches. However, screen prints depicting the searches were not submitted in support of the Tenant's estimate.

The Tenant also testified that she advised the Landlord of the problem but that she refused to do anything about it. A letter submitted into evidence, dated January 9, 2019, requested several repairs but did not refer to rats in the rental unit.

In reply, the Landlord did not deny the presence of rats on the rental property. However, I.S. testified that the issue was exacerbated by horse feces produced by the Tenant's 26 horses, and garbage on the rental property produced by the Tenant and a number of unauthorized occupants.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. Specifically, I find there is insufficient evidence of the value of the loss. The Tenant testified that the amount requested was an estimate and did not submit corroborating documentary evidence in support. Further, the furniture appeared in the evidence submitted to be in poor condition regardless of the damage the Tenant alleged was caused by rats.

In addition, I find the Tenant did not do what was reasonable to minimize the loss. She testified that rats were first noticed in early 2018, but that the Landlord refused to do anything about the problem. However, the Tenant was at liberty to make an application for an order that the Landlord deal with the issue when first observed in the rental unit. There was no evidence presented to suggest she sought relief until she submitted the Application to dispute a notice to end tenancy for unpaid rent or utilities. Further, the photographic evidence submitted confirms garbage strewn on the floor of the rental unit, which I accept could exacerbate a rat infestation.

In light of the above, I find the Tenant's Application is dismissed, without leave to reapply.

### Conclusion

The Tenant's Application 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 9, 2019

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Residential Tenancy Branch