



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT MNDCT RR FFL MNRL-S

### Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act. The tenant applied for:

- A monetary award for damages and loss pursuant to section 67;
- A retroactive reduction in the rent for services and facilities required but not provided pursuant to section 65; and
- Recovery of the filing fees from the landlord pursuant to section 72.

The landlord applied for:

- A monetary award for unpaid rent pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

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. The corporate landlord was represented by its agents. The agent VK (the “landlord”) primarily spoke for the landlord.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other’s materials. Based on the testimonies I find that the parties were each served with all of the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?  
Is the landlord authorized to retain the security deposit for this tenancy?  
Is either party entitled to recover the filing fee from the other?

### Background and Evidence

The parties agree on the following facts. This fixed term tenancy began in December, 2018 and ended on March 31, 2019. The monthly rent was \$1,350.00 payable by the 1<sup>st</sup> of each month. A security deposit of \$675.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant testified that soon after this tenancy began there were issues with the refrigerator in the suite. The parties gave evidence that the tenant informed the landlord of the issues. The landlord submits that they made arrangements for a contractor to inspect the appliance and provide a replacement. The tenant says that despite the landlord's efforts the situation was not resolved, the replacement refrigerator did not function properly and they were without the use of a working refrigerator throughout the tenancy. The tenant submits that they believe the failure of the landlord to provide a working refrigerator is a breach of the tenancy agreement which gives rise to the tenant's right to end the tenancy pursuant to section 45(3) of the *Act*.

The tenant seeks a monetary award in the amount of \$2,243.33 for loss of quiet enjoyment due to the lack of a working refrigerator, the cost of spoiled food and electricity bills which were paid despite having a malfunctioning appliance. The tenant also gave evidence that they believe the landlord entered the rental unit or allowed others to enter without proper notice or authorization.

The landlord denies the tenant's claim and says that the tenant reported the replacement refrigerator as working normally. Any issues with the replacement refrigerator stemmed from its settings and those were resolved immediately. The landlord submitted into documentary evidence correspondence with the tenant regarding the replacement refrigerator where the tenant reports that it is working normally.

The tenant gave written notice to the landlord to end the tenancy by a letter dated March 18, 2019. The tenancy ended on March 31, 2019. The landlord seeks a

monetary award of \$1,350.00, the equivalent of rent for the month of April, 2019 for which the landlord submits the tenant is responsible.

### 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.

I find that the tenant has not met their evidentiary burden to show on a balance of probabilities that there has been any breach by the landlord giving rise to a monetary award. The tenant's testimony is contradicted in the documentary evidence. The correspondence between the parties show that the tenant had a learning curve in adjusting to the settings of the replacement refrigerator but reported it as working normally to the landlord. I find there is insufficient evidence that the refrigerator was not functioning normally and that the tenant was without the use of a working appliance. I find the tenant's submission that the landlord entered the rental unit without authorization to not be supported by the evidence. I find the tenant's submission that the landlord acted in a heavy handed and bullying manner to be nonsensical.

Both individually and cumulatively, I find that the tenant has failed to establish their claim on a balance of probabilities. As such I dismiss the entirety of the tenant's application.

Section 45(2) of the *Act* explains that a tenant may end a fixed term tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice and no earlier than the date specified on the tenancy agreement.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In the matter at hand, written notice was provided to the landlord on March 18, 2019 and the tenancy ended March 31, 2019.

I find that the tenant's notice does not comply with the requirements of the Act as it provides an end of tenancy date prior to the fixed term and earlier than one month from date the notice is received by the landlord. I find that the tenant breached the Act and tenancy agreement and that the landlord is entitled to compensation for that breach.

I accept the evidence of the landlord that the tenant failed to pay monthly rent owing on April 1, 2019 in the amount of \$1,350.00. As such I issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application, they may recover the \$100.00 filing fee associated with this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a monetary Order in the landlord's favour in the amount of \$775.00 against the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 14, 2019

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Residential Tenancy Branch