



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY CLUB SUITES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC-S, FF, MNSD

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord 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 via Canada Post Registered Mail on December 27, 2018. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on March 22, 2019. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. The landlord stated that late evidence package was submitted on March 29, 2019 and sent by regular mail to the tenant on March 29, 2019. The tenant disputes that no late evidence

has been received from the landlord. The landlord stated that no proof of service exists as the package was sent by regular post. As the tenant has disputed receiving the late evidence and there is insufficient evidence of proof of service, I find that the two documents provided late by the landlord shall be excluded from consideration in this hearing. Neither party raised any other issues. The hearing proceeded.

### Preliminary Issue(s)

Extensive discussions with both parties prevented the hearing from being completed within the allotted 60 minutes. Numerous attempts to clarify the tenant's monetary claim resulted in conflicting and contradictory testimony by the tenant. The hearing was adjourned after 74 minutes past the start of the hearing. Both parties were cautioned that no new evidence was to be submitted nor would it be accepted. The landlord's portion of the application was completed. On adjournment the tenant's monetary claim would begin.

On June 6, 2019 the hearing resumed with both parties. Both parties made submissions, presented evidence and were given an opportunity to address the issues via conference call.

### Issue(s) to be Decided

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

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled a monetary order for money owed or compensation, return of the security deposit and recovery of the filing fee?

### 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 July 1, 2016 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 7, 2017. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$625.00 was paid. No condition inspection reports for the move-in or the move-out were completed. Both parties

confirmed the tenant provided to the landlord her notice to end the tenancy on November 27, 2018 for December 15, 2018. Both parties confirmed the tenant provided her forwarding address for return of the security deposit in a letter on December 15, 2018.

The landlord seeks a monetary claim filed of \$1,110.00 which consists of:

\$250.00	Cleaning
\$420.00	Furniture Removal
\$225.00	Packing & Debris Removal
\$173.25	Carpet Cleaning
\$100.09	Blind Replacement

The landlord clarified the above amounts totalled \$1,168.34, but that the amount claimed in the landlord's application for dispute was based upon an estimated amount on the same items. The landlord seeks recovery of the amounts detailed above for the total of \$1,168.34.

The landlord seeks recovery of cleaning costs of \$250.00 as the tenant vacated the rental unit leaving it dirty and the tenant's furniture items left. The landlord seeks \$420.00 for the furniture removal and \$225.00 for packing and debris removal. The landlord clarified that the furniture items have not been removed and are in storage. The tenant disputes the landlord's claim arguing that the receipt is fraudulent as the cleaner is living with the landlord's agent. The tenant also argues that no furniture was left by the tenant at the end of tenancy.

The landlord has submitted approximately 18 photographs of the rental unit at the end of tenancy showing the unit dirty requiring cleaning and numerous items left in the fridge, garbage bags left throughout the unit and furniture left behind.

The landlord also seeks \$173.25 for carpet cleaning and has submitted a receipt for such. The tenant disputes this claim.

The landlord seeks \$100.90 for the replacement of a damaged blind. The tenant disputes this claim. The landlord has submitted in support of the claim a receipt for the cost of the replacement blind and photographs showing a damaged blind. The landlord also provided a copy of the condition inspection report for the move-in which shows that no damage was noted to any of the blinds at the beginning of the tenancy. The landlord

has referred to an incomplete condition inspection report for the move-out completed by the landlord only and photographs for comparison.

The tenant seeks a clarified monetary claim of \$6,752.71 which consists of:

\$4,882.50	Harassment/Loss of Quiet Enjoyment
\$716.96	Moving Costs
\$168.00	Storage Cost
\$100.00	Rubbish Removal
\$110.25	Mailbox
\$625.00	Return of Original Security Deposit
\$150.00	Cleaning Cost

The tenant seeks the above noted compensation as she was forced to vacate the premises after enduring 3 ½ months of harassment by the landlord's agent between the period September to December 2018. The tenant claims the landlord's agent would be "banging on her door" repeatedly causing her to fear for her safety. The tenant claims in several emails that she sent to the landlord that she had repeatedly noted the harassment and conduct of the landlord's agent. The tenant referred to emails/note dated September 17, 2018, September 18, 2018, November 20, 2018, November 23, 2018 and November 14, 2018. The tenant was unable to direct the Arbitrator to any direct evidence of the landlord's agent's actions. The tenant stated that the landlord had submitted a statement by the landlord's agent admitting to the harassment. Repeated attempts by the tenant to refer to the statement were unsuccessful despite reviewing numerous documents submitted by the landlord. The landlord disputed the tenant's claims only stating that the tenant and the landlord's agent lived across from each other and were good friends until one day they were no longer associating with each other. The landlord argued that the tenant gave notice to end the tenancy and chose to move out.

### 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.

On the landlord's monetary claim, I find that the landlord has established a monetary claim of \$1,186.00 as claimed. Although the tenant disputed the landlord's claims, I find that the landlord's receipts in conjunction with the submitted photographs show that the tenant vacated the rental unit leaving it dirty, requiring cleaning for \$250.00; left furniture and debris, requiring furniture removal and the packing and removal of debris for \$420.00 and \$225.00. I also find based upon the submitted receipt and photographs of the broken blind that the claim for \$100.90 has been established.

On the landlord's claim for \$173.25 for carpet cleaning, I find that the landlord has also established a claim. I rely on the submitted invoice dated February 1, 2019 that details in the description, "Heavily Soiled and stained carpet in suite 108". The remaining portion of the invoice details the work required to clean the carpet.

On the tenant's clarified claim for \$5,977.71 as detailed above, I find that the tenant has failed. The costs claimed by the tenant are all as a result of the tenant vacating the rental unit. The primary issue before me is that the tenant has claimed that she was forced to vacate the rental unit due to harassment/loss of quiet enjoyment for the period September to December 2018 by the landlord's agent and incurred the costs as claimed. The landlord disputed this claim stating that she was served with notice by the tenant on November 26, 2018 to end the tenancy on December 15, 2018. The tenant relies primarily on a series of emails referred to in the hearing from September 17, 2018, September 18, 2018, November 20, 2018, November 23, 2018 and November 14, 2018. A review of these emails show that they are all emails from the tenant sent to the landlord detailing complaints made about the landlord's agent. The tenant repeatedly referred to a statement issued by the landlord, but was unable to refer the Arbitrator to the specific statement of the landlord's agent in the evidence submitted. Numerous attempts to locate the statement were unsuccessful and the tenant was unable to provide any further details about the statement. As such, on this basis, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord caused the tenant to suffer a loss of quiet enjoyment/harassment for the period September to December 2018. The tenant's application is dismissed.

The landlord has established a total monetary claim of \$1,168.34. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$625.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$643.34.

This order must be served upon the tenant. Should the tenant 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: June 10, 2019

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Residential Tenancy Branch