



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT FFT

### Introduction

On May 30, 2019 a hearing was held pertaining to the tenant's application for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

On the same day, a decision was rendered granting the tenant a monetary order of \$975.00 for compensation equivalent to one month's rent payable of \$875.00 and the recovery of the \$100.00 filing fee.

On June 6, 2019, the landlord filed an Application for Review Consideration on the basis that he was out of the country when he was served with the tenant's notice of the hearing and therefore failed to receive notice of the hearing and as a result was unable to attend the hearing to dispute the tenant's claim.

On June 24, 2019, an arbitrator rendered a review consideration decision in favour of the landlord, in which the original decision of May 30, 2019 was suspended and the parties ordered to participate in a Review Hearing.

The Review Hearing was held on August 19, 2019 through a in-person hearing at the request of the landlord.

Both the tenant and the landlord attended at the hearing. Both parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions of evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

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.

An incomplete written tenancy agreement was submitted into evidence by the landlord. Therefore, the parties confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began May 24, 2013.
- Monthly rent at the end of the tenancy was \$875.00 payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$425.00.

Both parties confirmed that the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) dated September 20, 2018. A copy of the Two Month Notice, submitted into evidence, provided the reason for ending the tenancy as:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The Two Month Notice provided an effective vacancy date of November 30, 2018, and the parties confirmed that the tenant vacated the rental unit on that date.

The tenant testified that she provided the landlord with a cheque for \$450.00 for payment of rent for November 2018, and noted on the cheque that she was using her security deposit of \$425.00 to pay for the remaining amount of rent owed for the month. In support of her testimony, the tenant submitted into documentary evidence a copy of the cancelled cheque which shows her notations regarding use of the security deposit. The tenant confirmed that she did not ask the landlord for permission in advance to use her security deposit towards rent, but assumed that since he accepted and cashed the cheque, that he was agreeable to the request. The landlord testified that he was not agreeable, but the landlord did not provide any testimony or evidence to indicate that he

had made any attempts to address the issue with the tenant. The landlord testified that he wished to make claims for damages against the tenant. I explained to both parties, that although the security deposit was no longer available to the landlord, either party was still at liberty to file an Application for Dispute Resolution to make claims against the other for damages, within the time limits set out in the *Act*.

Both parties confirmed that the landlord did not allow the tenant to withhold the last month's rent and the landlord never paid the tenant one month's rent payable of \$875.00, as required when a landlord serves a tenant with a Two Month Notice.

I provided the parties an opportunity to discuss coming to a negotiated settlement to address the current claim and any other claims for which the parties may wish to pursue, however the parties were unable to come to a mutually agreeable settlement of their dispute.

As such, I have proceeded to render an arbitrated decision in this matter.

### Analysis

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

It was undisputed by the parties that the landlord served the tenant with a Two Month Notice and that the landlord failed to pay the tenant one month's rent payable in accordance with the requirements of section 51(1) of the *Act*.

Therefore, I find that based on the evidence and testimony before me, on a balance of the probabilities, the landlord owes the tenant the equivalent of one month's rent payable under the tenancy agreement, that being \$875.00.

The tenant has already deducted the amount of her \$425.00 security deposit from the amount of rent she paid for her last month of rent. Therefore, I find that the security deposit has been returned to the tenant.

As explained to the parties in the hearing, both parties are at liberty to make claims against each other for any other claims for damages in accordance with the time limits set out in the *Act*.

As the tenant was successful in her application, I find she is entitled to recover the \$100.00 filing fee for this application from the landlord.

In summary, the tenant is issued a Monetary Order in the total amount of \$975.00.

### Conclusion

Pursuant to sections 51, 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$975.00 as statutory compensation owed as a result of receiving the landlord's Two Month Notice, and for the recovery of the \$100.00 filing fee.

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

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: August 21, 2019

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Residential Tenancy Branch