



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **FFL MNDCL-S**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended. The tenant attended with the advocates SM and EH ("the tenant"). Each party had the opportunity to call witnesses, and present affirmed testimony and written evidence. The tenant acknowledged receipt of the landlord's Notice of Hearing and Application. No issues of service were raised. I find the landlord served the tenant in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The parties agreed they entered into a month to month residential tenancy agreement beginning April 1, 2015 which ended on July 31, 2018. Monthly rent was \$963.00. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$450.00. A copy of the agreement was submitted as evidence.

The parties agreed that the tenant was ordered to pay the landlord a monetary order of \$100.00 for reimbursement of the filing fee in a previous hearing during which an order of possession was granted for nonpayment of rent. The parties also agreed that the landlord was subsequently ordered in a separate hearing to pay to the tenant \$900.00 for the return of the security deposit and a monetary order in favour of the tenant was issued in this amount which remains outstanding.

This is the third hearing between the parties. The file numbers for the previous hearings appear on the first page of this Decision. The landlord brought this Application on May 14, 2019.

The parties disagreed on whether a condition inspection was properly carried out at the beginning of the tenancy. No signed report was submitted as evidence. No condition inspection by both parties took place on moving out.

No rent is owed.

In support of his claim, the landlord submitted photographs which he claimed were of the unit as it was when the tenant vacated. The photos were date stamped July 2019, well after the tenancy ended (July 31, 2018). As well, the tenant stated the photos were not of her unit.

The landlord withdrew his claims for repair of the toilet valve and reimbursement of the parking ticket.

The tenant stated she unexpectedly found herself in distressed financial circumstances and was unable to continue payment of rent. Accordingly, she left the keys in the unit, gathered as many of her possessions as she could carry, and vacated on July 31, 2019.

The parties agreed that the landlord did not comply with the inventory, storage and notice of disposal provisions in the *Act* regarding the tenant's abandoned property; no valuation of the items was submitted as evidence.

The landlord clarified the remainder of the landlord's claim as follows:

ITEM	AMOUNT
Moving truck rental	\$50.41
Waste disposal	\$28.00
Waste disposal	\$36.00
Cleaning	\$ 235.20
Movers	\$573.38
Reimbursement of the filing fee	\$100.00
<b>Total Monetary Award Requested</b>	<b>\$1,022.99</b>

#### *Moving truck rental*

The landlord submitted a receipt for \$50.41 for truck rental dated August 1, 2018 in support of his claim for compensation for moving the tenant's personal possessions out of the unit and taking them to waste disposal.

However, the landlord also stated that he stored the tenant's possessions before taking them to the waste disposal in January 2019 in a storage area adjacent to the unit. The tenant asserted that the landlord was providing incorrect information about this, and other, expenses.

#### *Movers*

The landlord submitted a receipt dated August 1, 2018 for moving expenses of the tenant's personal belongings in the amount of \$550.00 plus (improperly calculated) tax of 4.25% (\$23.38) for a total of \$573.38. The receipt included 25 hours of labour.

The landlord did not clarify if this was related to moving the tenant's personal possessions to the landlord's storage area or if the moving related to taking the items to

waste disposal. (The landlord's only receipts for waste disposal, discussed later, were dated in January 2019.)

The tenant questioned the veracity of the invoice and stated it appeared to be a fraudulent invoice "downloaded from the internet and filled in". The tenant stated that the invoice does not include the required tax information for the provider, there is reference to a "zip code", the tax was not calculated properly, no name/address/contact were included, and the amount of time is excessive given the possessions she left behind.

The tenant also pointed out the contradiction in the landlord's testimony about whether he stored her possessions or took them forthwith to waste disposal.

The landlord was invited during the hearing to provide further particulars regarding this information missing from the invoice and declined, explaining the information was not in his possession.

Accordingly, the tenant asserted that the landlord is not entitled to recover costs associated with the moving and disposal of the items.

#### *Waste Disposal*

The landlord claimed reimbursement of two waste disposal fees of \$18.00 and \$36.00 dated January 2019 which the landlord stated related to disposal of the tenant's abandoned property.

The tenant acknowledged leaving items at the unit. However, the tenant stated that the moving expense (dated August 1, 2019) does not agree with the disposal expense date (January 2019) and questioned whether either expense credibly related to her tenancy.

As discussed earlier, the parties agreed that the landlord did not comply with the inventory, storage and notice of disposal provisions in the Act regarding the abandoned property; no valuation of the items was submitted as evidence.

Accordingly, as mentioned, the tenant stated that the landlord is not entitled to recover costs associated with the moving and disposal of the items.

#### *Cleaning*

The landlord requested reimbursement of cleaning expenses after the tenant vacated of \$235.20. The landlord submitted a receipt and claimed that this amount was paid because of the condition of the unit when the tenant vacated.

The tenant denied that cleaning was necessary as she was a “clean person” and she left the unit reasonably clean. The tenant acknowledged that she left items in the unit but stated that no cleaning was necessary to support an expense of this nature.

The tenant also pointed out that the name and contact of the provider of the service was missing from the invoice. The tenant questioned the veracity of the invoice and stated that it appeared to be a generic downloaded template, without details such as the name, address, or GST # number of the provider.

The tenant stated the photographs, which did not indicate a need for cleaning, were not taken of her unit in any event.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

I found the landlord's testimony to be contradictory and the evidence upon which he relied to be unreliable. I find I will not consider the photographs which are not established by the landlord to be of the unit at the time the tenant vacated.

I find the receipts for moving and cleaning to be unauthentic and untrustworthy. I therefore do not give much weight to the landlord's testimony which I find to be retaliatory in nature and manufactured in order to obtain a monetary award equal to the monetary award earlier issued to the tenant for the return of the security deposit.

The tenant acknowledged that she suddenly and unexpectedly was unable to pay rent. She acknowledged that she turned the keys in and left with what she could carry. I found her evidence to be straightforward and reliable. I give more weight to the tenant's testimony than to the landlord's testimony.

I accept the tenant's testimony that she left the unit reasonably clean.

The landlord's claims with respect to the cleaning and moving expenses rest completely on the landlord's testimony, to which I give little weight, and upon receipts which I have found lack veracity and reliability. Accordingly, I find the landlord has not met the burden of proof on a balance of probabilities with respect to these claims and I dismiss them without leave to reapply.

The landlord acknowledged that the landlord did not comply with the provisions of the Act relating to abandonment of a tenant's possessions. I therefore do not allow the landlord recovery of expenses ostensibly related to costs regarding moving, storage and disposal when there has been noncompliance with the landlord's obligations in this regard.

### *Summary*

I dismiss all the landlord's claims without leave to reapply, including the landlord's claim for reimbursement of the filing fee.

Conclusion

The landlord's claims are 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: August 25, 2019

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Residential Tenancy Branch