



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

**MNDCT**

### Introduction

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

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

The tenant attended accompanied by WS, friend ("the tenant"), CI and LF attended as agents for the landlord ("the landlord") calling the witness DW.

Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Each party acknowledged receipt of the other party's documents. No issues of service were raised. I find the parties were served in compliance with the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

### Background and Evidence

The parties agreed the residential tenancy between the parties began on December 1, 2018. The tenant's rent is subsidized and is \$498.00 monthly payable on the first of the month. A copy of the agreement was submitted as evidence.

The tenant claimed reimbursement of the following:

ITEM	AMOUNT
Bank fees - March 1, 2019	\$70.00
Bank fees - April 1, 2019	\$70.00
Hydro expenses	\$20.00
Compensation for spoiled food	\$200.00
<b>Total Monetary Award requested</b>	<b>\$360.00</b>

The tenant testified as follows with respect to his claim for reimbursement of bank fees relating to rent due on March 1 and April 1, 2019.

The tenant stated that he was unaware of the amount of the rent he was required to pay after calculation of the rental subsidy and was expecting confirmation from the landlord. On March 1, 2019, the parties agreed that the landlord in error presented for payment at the tenant's bank a cheque from the tenant for a larger amount than was due and for which the tenant did not have sufficient funds. As a result, the tenant incurred banking expenses of \$70.00. The landlord acknowledged the landlord's error and agreed during the hearing to provide a credit to the tenant's account in the amount of \$70.00.

On April 1, 2019, the parties agreed that the landlord presented for payment at the tenant's bank a cheque from the tenant in the amount of \$460.00 for rent due April 1, 2019 (which is reduced from \$498.00 due to a credit) and for which the tenant did not have sufficient funds. As a result, the tenant incurred banking expenses of \$70.00. The tenant blamed the landlord and stated that he, the tenant, had not been informed by the landlord of the amount of the rent. If he had been informed, the tenant stated he would have made sure to have adequate funds in the account to cover the rental.

In response, the landlord stated that the tenant was informed the amount of rent was \$498.00 and that he should have had adequate funds in his account to cover his rent. The landlord denied an obligation to reimburse the tenant for banking fees incurred because of the failure of the tenant to have adequate funds in the account to cover rent due. The landlord submitted rental ledgers showing previous NSF payments and a letter from the subsidizing authority dated February 2, 2019 setting out the rental due.

The parties agreed that the tenant was removed from his unit by public officers from April 8 to 17, 2019.

The tenant claimed that upon his return to the unit, the lights and television were on, that the landlord should have turned them off, and, as a result, he incurred estimated hydro expenses of \$20.00.

The tenant also claimed that the landlord unplugged his refrigerator in his absence resulting in spoiled food of an estimated amount of \$200.00. The tenant submitted no evidence to support this claim.

The witness DW, the landlord's caretaker, stated that he was requested by the VPD to lock the tenant's unit on April 8, 2019 and did so without entering. The landlord denied an obligation to turn off the tenant's lights, etcetera, and denied responsibility for the spoiled food.

### Analysis

I have considered all the submissions and evidence presented to me in the 60-minute hearing, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

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 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.

Reference to each of the tenant's claims follows.

The landlord acknowledged that the landlord will provide a credit to the tenant's rental account of \$70.00 with respect to the deposit of March 1, 2019, made in error.

I accept that the tenant incurred banking expenses of \$70.00 when the landlord's rental cheque was returned NSF on the subsequent deposit date of April 1, 2019. However, I find that the tenant has not met the burden of proof on a balance of probabilities that he incurred the banking expenses because the landlord failed to meet a duty owed by the landlord to the tenant, or that the landlord is in violation of the tenancy agreement or any obligation under the Act.

I find the landlord coherently and plausibly set out in detail how the tenant was informed of the rent calculation well in advance of the April 1, 2019 rental due date. The landlord explained that the tenant had a history of NSF rental payments and the landlord carefully explained the rental calculation to the tenant in advance of the payment due date of April 1, 2019. I find the landlord's professionally and articulately presented supporting evidence for this assertion including copies of the rental ledgers and subsidy confirmation letter to the tenant dated February 2, 2019.

I find the tenant is solely responsible for having failed to have adequate funds in his account to cover the rent due on April 1, 2019. In short, the tenant is the author of his own misfortune and cannot show that the landlord failed in any duty to him. I therefore find the tenant's request fails with respect to this aspect of his claim.

With respect to the second main category of the tenant's claims, I also find that the tenant has failed to meet the burden of proof on a balance of probabilities that the landlord had a duty to disengage his lights when the tenant was not in his unit from April 8-17, 2019. I also find the tenant has failed to submit any evidence that the landlord turned off his refrigerator causing food spoilage. I find this is baseless conjecture and suspicion only.

In reaching my finding in this regard, I have considered the professional and credible evidence provided by the two representatives of the landlord during the hearing as well as the caretaker DW. I accept their evidence that DW was requested by the VPD to secure the tenant's door when the tenant vacated and that he did so. I further accept the landlord's evidence that the unit remained untouched until the tenant's return.

Further, the tenant has submitted no evidence of food spoilage or proof of loss. Except for the \$70.00 reimbursement of the bank fees for the March 1, 2019 rent deposit agreed to by the landlord, I dismiss all the tenant's claims without leave to reapply.

As the \$70.00 reimbursement will be made by credit to the tenant's rental ledger, I find there is no need for a monetary order.

### Conclusion

The landlord is directed to credit the tenant's rental ledger in the amount of \$70.00 as agreed to by the landlord and set out above.

The tenant'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: October 01, 2019

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Residential Tenancy Branch