



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL MNDL MNRL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, money owed, compensation for monetary loss, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on July 20, 2019 to the address obtained through a private detective. The landlord provided the tracking information in their evidentiary materials. I find that the tenant was deemed served with this package on July 25, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

### Issues to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified to the following facts. This tenancy began on March 1, 2018 and ended on May 1, 2018. Monthly rent in the amount of \$3,500.00 was payable on the first day of each month. The tenant had previously paid a security deposit in the amount of \$1,750.00, which was applied towards a previous monetary order granted to the landlord on April 8, 2019. The tenant did not provide the landlord with his forwarding address in writing. The landlord hired a private detective to determine the tenant's current address.

This tenancy ended on May 1, 2019 after the landlord obtained a Writ of Possession, and utilized the services of a Bailiff to obtain peaceful and vacant possession of the home.

The landlord is seeking a monetary order as follows:

Loss of Rent for May 2019	\$3,500.00
Unpaid Gas Bill	438.34
Unpaid Water Bill	42.33
Unpaid Water Bill	80.55
Lawn Care	173.25
Repairs to Damage caused by tenant	3,193.52
Cleaning & garbage removal	876.93
<b>Total Monetary Award Requested</b>	<b>\$8,304.92</b>

The landlord provided detailed evidence of the losses due to the tenant's failure to leave the home in reasonably clean and undamaged condition. The landlord testified that due to the extensive damage left by the tenant, she suffered a monetary loss of rent for the month of May 2019 as she was unable to re-rent the home until the repairs were completed.

The landlord provided invoices, estimates, and receipts, as well as photos to support her claim.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

**Section 26** of the *Act*, in part, states as follows:

#### ***Rules about payment and non-payment of rent***

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenant was obligated to pay the rent as per the tenancy agreement and the *Act*. I find that the tenant failed to pay any rent for the month of May 2019.

Furthermore, I am satisfied that due to the tenant's failure to vacate the property and leave it in reasonably clean and undamaged condition, the landlord suffered a loss of rental income for the month of May 2019. On this basis, I allow the landlord's monetary claim for loss of rental income for May 2019.

I find that the tenant failed to pay the outstanding utilities for this tenancy. Accordingly, I allow the landlord's monetary claim for the unpaid utilities for this tenancy.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages and losses, and have taken in consideration of the evidentiary materials submitted by the landlord in support of her claim.

I find that the landlord provided detailed evidence to support her claim for losses due to the tenant's failure to leave the home in reasonably clean and undamaged condition. Although the landlord submitted a claim for the cost of lawn care, I am not satisfied that this loss was due to the tenant's actions. On this basis, I allow the landlord to recover the costs of the repairs and losses as claimed, with the exception of the lawn care.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in their application, I find that the landlord is entitled the \$100.00 filing fee paid for this application.

### Conclusion

I issue a Monetary Order in the amount of \$8,231.67 in the landlord's favour as set out in the table below. The landlord's monetary claim for lawn care is dismissed without leave to reapply.

Loss of Rent for May 2019	\$3,500.00
Unpaid Gas Bill	438.34
Unpaid Water Bill	42.33
Unpaid Water Bill	80.55
Repairs to Damage caused by tenant	3,193.52
Cleaning & garbage removal	876.93
Filing Fee	100.00
<b>Total Monetary Award</b>	<b>\$8,231.67</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: October 25, 2019

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Residential Tenancy Branch