



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 22, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was assisted by M.C., his spouse. All in attendance provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on the Landlord by registered mail. The Landlord acknowledged receipt of both packages. The Landlord testified the documentary evidence he intended to rely upon was served on the Tenant by registered mail and email. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy began on May 2, 2017 and ended on June 30, 2019. Rent in the amount of \$1,430.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$687.50 and a pet damage deposit of 687.50, which were returned to the Tenant at the end of the tenancy.

The Tenant claimed monetary relief in the amount of \$2,445.00. She testified that rent due on June 1, 2019 was withheld but that it was not enough to compensate her for her losses. The Tenant claimed \$1,430.00 as a reimbursement of rent paid on May 1, 2019, \$715.00 for the inconvenience of having to deal with fridge repairs and a rodent infestation, and \$300.00 for the value of food lost when fridges stopped working.

The Tenant testified she reported that her fridge was not working to the Landlord in late April 2019. Although the fridge was repaired or replaced soon thereafter, the second fridge also stopped working. The Tenant testified she had no fridge for most of May and June 2019.

In addition, the Tenant testified that a potential rat problem in the rental property was reported to the Landlord by another tenant on May 6, 2019. A text message was submitted in support. She subsequently reported her own concerns to the Landlord and a pest control company attended. However, the Tenant testified that the Landlord should have taken the problem more seriously after receiving the May 6 email. The Tenant testified she had to deal with rat feces and urine, and the presence of dead rats.

In support of her claim, the Tenant submitted photographs depicting holes in walls, rat traps, chewed wires, and a dead rat in a trap.

The Landlord agreed with much of the evidence provided by the Tenant. However, the Landlord disagreed with the Tenant's characterization of the timing and adequacy of his response to her concerns. For example, a written chronology submitted into evidence by the Landlord indicates the problem with the fridge was reported on April 28, 2019, and that the fridge was repaired or replaced on May 3, 2019. However, the fridge was still not operating correctly, and a further service call was required on May 22, 2019. During the service call it was discovered that wiring had been chewed by rats. The Landlord arranged for a pest control company to address the problem, which attended on May 25, 2019. The pest control company filled in holes and set traps to deal with what the Landlord characterized as a small problem.

The Landlord noted that the Tenant did not pay rent when due on June 1, 2019, even though the Landlord was responding to the Tenant's complaints in a timely manner.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

After careful consideration of the evidence and submissions of the parties, and applying the 4-part test described above, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence of the value of the Tenant's loss. While I accept that the fridge and rats were issues of concern to the Tenant, I find that the Landlord responded to them in a timely manner as described in the evidence. I also note that the Tenant did not submit receipts or other documentary evidence to establish the value of her loss. Rather, she stated she felt entitled to more compensation for her alleged losses than the rent that she withheld. In addition, I find there is insufficient evidence before me to conclude the Tenant did was reasonable to minimize her loss. Indeed, it appears the Tenant gave notice and vacated the rental unit while the issues were being addressed by the Landlord.

Accordingly, I order that the Application is dismissed without leave to reapply.

### Conclusion

The Application is 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 29, 2019

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Residential Tenancy Branch