



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord and his agent attended the telephone conference call hearing; the tenants did not attend.

The landlord's agent testified that they served the tenants with their Application for Dispute Resolution and Notice of Hearing by personal service on June 15, 2019.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The hearing process was explained to the landlord and landlord's agent and they were given an opportunity to ask questions about the hearing process. Thereafter, the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary Issue

I have reviewed the written tenancy agreement submitted by the landlord and note that the only tenant signing the document was PC, as listed on the style of cause page. As a result, I have excluded the other named tenant/respondent, YQC, from further consideration in this matter.

### Issue(s) to be Decided

Is the landlord entitled to keep all or part of the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

The landlord's evidence shows that this tenancy began on December 1, 2013, monthly rent was \$700.00, and the tenant paid a security deposit of \$350.00. The landlord submitted further that the tenancy ended at the end of June 2019, when the tenant vacated the rental unit.

The landlord's listed monetary claim is \$34,971.38. He provided a breakdown of \$6,512.44 in unpaid utilities since 2015 and \$28,458.94 in unpaid rent since November 2015.

The landlord submitted that the tenant failed to pay full rent since November 2015, and no rent at all since December 2016.

The landlord submitted that the tenant was required to pay 75% of the utilities, and have not paid since November 2015.

In response to my inquiry, the landlord's agent submitted that the tenant, who lived in their basement unit, claimed to have tripped in the back yard and threatened to sue the landlord. At that time, the tenant began not paying rent and the landlord turned over the affairs of the tenancy to his daughter.

The landlord submitted that his daughter put the tenant on a payment schedule, but became too busy to continue handling the tenancy. When the landlord discovered that the tenant was not paying, the tenant tried to pick a fight. The landlord's agent

submitted that the landlord was intimidated by the tenant, as he is an elderly man and afraid.

Later in the tenancy, the landlord thought his daughter was handling the tenancy and the landlord's daughter thought the landlord was handling the tenancy.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

In the case before me, I find the evidence shows the landlord failed to address the tenant's failure to pay rent and utilities from the first time of occurrence and then did nothing to collect the rent or utilities for at least four years. The landlord's loss continued to build for several without the landlord taking any steps to stop the loss.

If the tenant was not paying rent or utilities under the terms of the written tenancy agreement, the landlord may serve a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") at the very first instance and have the tenant evicted. Instead, I find the evidence shows the landlord failed to take any steps to minimize his loss by issuing a Notice, until his loss reached \$34,971.38.

Additionally, while the landlord asserted the tenant owed 75% of the utilities, I did not find that term in the written tenancy agreement provided by the landlord. I therefore concluded this was not an obligation of the tenant under their written contractual agreement.

Due to the above, I find the landlord has submitted no evidence to prove that he did whatever is reasonable to minimize his loss immediately, or at any time until the tenancy was nearly over, 3-4 years later.

As a result, I find the landlord has not met his burden of proof required by the Act and I therefore dismiss his application, without leave to reapply.

I have not ordered the landlord to return the tenant's security deposit, as the tenant failed to attend the hearing and provide evidence that they provided the landlord a written forwarding address.

### Conclusion

For the reasons above, I have dismissed the landlord's application, 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 3, 2019

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Residential Tenancy Branch