



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord's property manager and the landlord's leasing agent (the "landlord's agents") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

### Preliminary Issue- Tenant's Objection

At the beginning of the hearing the tenant objected to the owner landlord being represented by her property manager and leasing agent. The tenant asserted that the landlord was required to personally attend this hearing.

The landlord's property manager and leasing agent testified that they were acting as the landlord's agent and had authority to speak on behalf of the landlord at today's hearing.

Section 74(4) of the *Act* states that a party to a dispute resolution proceeding may be represented by an agent or a lawyer.

At the hearing I informed the tenant that the landlord is not required to personally attend at the hearing and is permitted to be represented by her agents.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

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

A substantial amount of the tenant's testimony sought to re-argue a previous claim that was conclusively decided in a Decision dated July 10, 2019. The file number for this claim was verbally provided by the tenant in the hearing and is located on the cover page of this decision. I have not included the majority of the tenant's testimony regarding his previous claim because it is not relevant to the landlord's application.

Both parties agree that the July 10, 2019 decision dismissed the tenant's application for the return of personal property and dismissed the tenant's application for the return of rent paid to the landlord from November or December 2017 through to the end of 2018.

Both parties agreed to the following facts. This tenancy began on August 22, 2017 and has ended. Monthly rent in the amount of \$4,150.00 was payable on the first day of each month. A security deposit of \$2,075.00 was paid by the tenant to the landlord. A

written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that he mailed the landlord his forwarding address sometime around April 29, 2019. The tenant did not enter any documentation into evidence to prove this mailing. The property manager testified that the landlord did not receive the tenant's forwarding address and only learned of his current address when the landlord received the tenant's previous application for dispute resolution.

Both parties agree to the following facts. In a decision dated January 22, 2019 the landlord was granted an Order of Possession for unpaid rent and a Monetary Order for December 2018's rent. The landlord served the tenant with the January 22, 2019 Decision, Monetary Order and the Order of Possession.

The tenant applied for Review Consideration of the January 22, 2019 decision and a Review Hearing was granted. The Review Hearing occurred on March 18, 2019. The tenant did not attend the Review Hearing. In a Review Hearing Decision dated March 18, 2019 the January 22, 2019 Decision and Orders were confirmed. The file number for the January 22, 2019 Decision was provided by the landlord verbally in the hearing and is located on the cover page of this decision.

The property manager testified to the following facts. She drove by the subject rental property in January of 2019 and saw that the tenant was moving his possessions out of the subject rental property into a moving van. In January of 2019 she was contacted by another landlord looking for a reference for the tenant.

The property manager testified to the following facts. After receiving the March 18, 2019 Decision she attended at the subject rental property and posted a Notice of Entry on the subject rental door. On April 26, 2019 the property manager entered the subject rental property and found that the tenant had removed substantially all of his personal property, leaving behind garbage bags and random items scattered throughout the subject rental property. Photographs of same were entered into evidence. The property manager testified that the items left behind had no monetary value. The property manager attempted to get in contact with the tenant but her calls were not returned. Based on the above, she believed the tenant abandoned the subject rental property and its contents.

The property manager testified that the landlord hired a junk removal company to remove the garbage and other items left in the subject rental property. A receipt in the

amount of \$1,417.50 was entered into evidence. The landlord is seeking to recover this amount from the tenant.

The tenant testified to the following facts. The tenant moved into a new property on January 15, 2019 but did not abandon the subject rental property. The tenant left possessions at the subject rental property that he intended to retrieve. The tenant testified that he left his property at the subject rental property because it was contaminated with mould and needed to be specially cleaned before he could move it into his new property. No documentary evidence in support of this testimony was entered into evidence.

The property manager testified to the following facts. The tenant did not pay rent from December 2018 onwards. The landlord is seeking a monetary award in the amount of \$16,750.00 for unpaid rent from December 2018 to March 2019.

The tenant testified that he withheld rent because the landlords did not complete required repairs at the subject rental property.

The property manager testified that water is not included in the rent. The tenancy agreement signed by both parties and entered into evidence states same. The property manager testified that the tenant did not pay any of the water bills for the duration of this tenancy. The landlord is seeking a monetary award in the amount of \$2,968.98 for all outstanding water bills. The landlord entered into evidence a water bill from January 1, 2019 to March 31, 2019 in the amount of \$498.17. No other water bills were entered into evidence.

The tenant testified that he did not live at the subject rental property for the majority of that billing period so he did not pay the January 1, 2019- March 31, 2019 water bill.

### Analysis

### Abandonment

Section 24(1)(b)(i) and (ii) of the *Regulation* states:

A landlord may consider that a tenant has abandoned personal property if, subject to subsection (2), the tenant leaves the personal property on residential property:

- (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
- (ii) from which the tenant has removed substantially all of his or her personal property.

Based on all the evidence provided by both parties, I find that the tenant did not ordinarily continuously reside at the subject rental property from January 15, 2019 to March 18, 2019 and did not pay rent for January to March 2019.

Based on the evidence of the landlord, including the photographs of the subject rental property taken after the March 18, 2019, I find that by April 26, 2019 the tenant had removed substantially all of his personal property. I note that most of the furniture had been removed from the subject rental property by April 26, 2019 and the majority of the items left behind were garbage bags and clothes strewn along the floor.

Section 24(2)(b) of the *Regulation* states:

The landlord is entitled to consider the circumstances described in paragraph (1)(b) as abandonment only if the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

I find that the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property. The tenant in this dispute was served with and received an Order of Possession in January of 2019 which he disputed. The tenant did not attend the Review Hearing and the January 22, 2019 Decision, Monetary Order and Order of Possession were confirmed in a Review Hearing Decision dated March 18, 2019. The tenant arranged for a moving truck to attend at the subject rental property in January of 2019 and removed substantially all of his possessions.

Given this factual scenario, I find that it was reasonable for the landlord to believe that the tenant had vacated the subject rental property and abandoned some of his possessions.

I find that the tenant's statement that he did not abandon the possessions at the subject rental property does not accord with the facts of this case. Stating a fact does not make it true. I confirm my above finding that it was reasonable for the landlord to believe, given the facts of this case, that the tenant, who had removed substantially all of his

possessions from the subject rental property, would not return to the subject rental property nearly two months after he moved into a new property.

Section 24(3) of the *Regulation* states:

If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

Section 25 of the *Regulation* states:

**25 (1)**The landlord must

- (a)store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b)keep a written inventory of the property,
- (c)keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d)advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2)Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a)the property has a total market value of less than \$500,
- (b)the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c)the storage of the property would be unsanitary or unsafe.

Pursuant to section 24(3) of the *Regulation*, I find that the landlord was entitled to remove the tenant's remaining possessions as these possessions were abandoned.

Pursuant to the property manager's testimony and the photographic evidence, I find that the items left at the subject rental property had no monetary value. I note that the tenant did not enter any documentary evidence to establish that any of the items left at the subject rental property had any monetary value.

Pursuant to section 25(2) of the *Regulation*, I find that the landlord was entitled to dispose of the property by having a garbage removal company take it to the garbage dump.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the property manager's testimony, I find that the tenant left a large amount of garbage at the subject rental property. I find that the tenant is responsible for the cost of removing the garbage in the amount of \$1,417.50.

### Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$4,150.00 on the first day of each month. Based on the testimony of both parties, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act*. The tenant is not entitled to withhold rent for requested repairs, even if the landlord is breaching the *Act*.

I find that this tenancy officially ended on March 18, 2019. I find that the tenant was obligated to pay rent on the first day of every month from December 2018 to March 2019 and that he failed to do so. As the landlord already has a Monetary Order for December 2018's rent, I will not provide the landlord with compensation for December 2018. I find that the landlord is entitled to a monetary award in the amount of \$12,450.00 for the months of January to March 2019.

### Water Bills

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenancy agreement states that water is not included in the rent. I find that the tenant was required to pay his water bills up until March 18, 2019. The landlord has only provided one water bill in the amount of \$498.17.

I find that the landlord is entitled to recover money for the unpaid water bill pursuant to the following calculation:

$\$498.17 \text{ (water bill)} / 90 \text{ (days in January – March 2019)} = \$5.54 \text{ (daily water charge)}$

$77 \text{ (days tenancy was ongoing from January 1 – March 18, 2019)} * \$5.54 \text{ (daily water charge)} = \$426.58$

I find that the landlord is not entitled to the entire amount claimed for unpaid water bills as bills for same were not entered into evidence and the landlord has therefore failed to prove the value of her loss.

### Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.



I find that the landlord has not received the tenant's forwarding address in writing. I find that the tenant has not proved, on a balance of probabilities that he sent the landlord his forwarding address, other than through the dispute resolution proceedings. A forwarding address only provided by the tenant on an application for dispute resolution form does not meet the requirement of a separate written notice and is not deemed to provide the landlord with the forwarding address.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$2,075.00 in part satisfaction of the monetary claim against the tenant.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Garbage removal	\$1,417.50
Rent from January to March 2019	\$12,450.00
Water bill	\$426.58
Filing Fee	\$100.00
Less security deposit	-\$2,075.00
<b>TOTAL</b>	<b>\$12,319.08</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 08, 2019

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Residential Tenancy Branch