



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

FFL MNDCL-S MNDL-S

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

This tenancy began in March 15, 2018 and ended March 31, 2019. The monthly rent was \$1,950.00 payable on the 15<sup>th</sup> of each month. A security deposit of \$925.00 was paid at the start of the tenancy and is still held by the landlord. There was a previous

hearing under the file number on the first page of this decision, where the tenants were provided with a monetary order for the return of the security deposit for this tenancy.

The tenants provided the landlord with notice to end the tenancy on March 1, 2019 and vacated the rental unit by March 31, 2019. The tenants did not pay monthly rent on March 15, 2019. There was no condition inspection report prepared by the parties during this tenancy.

The landlord seeks a monetary award in the amount of \$29,832.99. The landlord provided a Monetary Order Worksheet setting out the following items they are seeking.

Item	Amount
Sofa cover replacement	\$120.96
Mattress replacement	\$1,287.98
Garden Clean Up	\$388.50
Registered Letters to Tenant	\$27.00
Commission on Sale of Property	\$20,947.50
Fees & Disbursements on Property Sale	\$924.00
Penalty & Discharge Fee	\$3,557.46
Loss of Rent for April, 2019	\$1,950.00
<b>TOTAL</b>	<b>\$29,203.40</b>

I note that the total amount of the items listed in the landlord's Monetary Order Worksheet does not correspond to the amount claimed in their application and the landlord provided no explanation for the discrepancy.

The landlord submits that the tenants kept animals on the rental property and they caused considerable damage to the suite requiring replacement of items and cleaning. The landlord submits that as a result of the tenants ending the tenancy they were forced to sell the property as they could not find a new occupant despite taking reasonable efforts. The landlord has submitted into documentary evidence various receipts, photographs and closing documents for the property sale.

### Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. The security deposit for this tenancy has been the subject of a previous hearing and a final decision was issued by the previous arbitrator

at the earlier hearing. The landlord now seeks authorization to retain the deposit but I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*. Accordingly, I dismiss this portion of the landlord's claim seeking authorization to retain the security deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While the landlord claims the cost for damage to items in the suite and have provided some photographs and receipts, I find that in the absence of a proper condition inspection report prepared at the start of the tenancy there is insufficient evidence that the tenants are responsible for the condition of the suite. I find the landlord's submissions that there are damages in the suite and that they are a result of the tenants to not be sufficiently established. Consequently, I dismiss this portion of the landlord's application.

I find the landlord's claim for the cost of mail sent to the tenants to simply be the expected expenditure for filing and serving the application and not damages attributable to the tenants. Therefore, I dismiss this portion of the landlord's claim.

I find the landlord's claim for the costs related with the sale of the property to not be sufficiently supported in the evidence. I find the landlord's submission that they were forced to sell the property due to the end of the tenancy to be patently unreasonable and have no basis in reality. I find that there is no evidence that there is any causal relationship between the tenants' ending the tenancy and the landlord's choice to sell the rental property. The evidence submitted by the landlord shows that they had numerous inquiries regarding the rental property when they posted it as available. I find that the landlord could have found a new occupant had they chosen to do so. I find that there is no evidence to show that the sale of the property resulted from the tenants' actions, nor is there evidence to show that there has been any losses attributable to the tenants. I dismiss the portions of the landlord's application seeking amounts related to the sale of the property.

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I accept the evidence of the parties that pursuant to the written tenancy agreement of March 3, 2018, rent was due on the 15<sup>th</sup> of each month. When the term of the fixed term tenancy concluded the tenancy continued on a month-to-month basis under those same terms.

I find that, as the tenants gave notice of their intention to end the tenancy on March 1, 2019 the effective date of the end of tenancy was April 14, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,950.00 on March 15, 2019. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

I find that a violation of the tenancy agreement occurred by the tenants who failed to pay the full rent owing on March 15, 2019. Therefore, the landlord is entitled to a monetary award in the amount of \$1,950.00, the equivalent of one month's rent.

As the landlord was partially successful in their application I find that the landlord may recover \$50.00, a portion of their filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,000.00. The tenants must be served with this Order as soon as possible.

Should the tenants 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