



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MORRISON GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

FFL MNDCL MNDL MNRL

### **Introduction**

This hearing dealt with the landlord's application pursuant sections 67 and 72 of the *Residential Tenancy Act* (the *Act*) for a monetary award for damages and loss and to recover the filing fee from the tenant.

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. The corporate landlord was represented by its agents. The agent MC (the "landlord") primarily spoke on behalf of the corporate landlord. The tenant represented themselves with the assistance of a family member.

The tenant confirmed receipt of the landlord's application and evidence. Based on the testimony I find that the tenant was served with the materials in accordance with sections 88 and 89 of the *Act*.

The tenant testified that they had not served the landlord with any of their evidence. In accordance with Residential Tenancy Rule of Procedure 3.15 and the principles of procedural fairness and natural justice I find that it is inherently prejudicial to consider evidence that has not been made available to the other party. For this reason I have excluded the entirety of the tenant's evidence which was not served on the landlord in accordance with the *Act* and Rules of Procedure. While the tenant made reference to their written submissions throughout the hearing, I have not considered the materials which were not served. The tenant also said that they have brought a counterclaim in their evidence. I find that including a new claim in evidentiary materials, much less materials which were not served on the other party, is not a manner by which a claim for dispute resolution can be initiated and have not considered the tenant's submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claim and my findings are set out below.

The parties disagreed on most of the facts pertaining to this tenancy. The landlord gave testimony that this tenancy began in August, 2018 and monthly rent was \$2,005.00 payable on the first of each month. The landlord subsequently, after discussion with the other agent, revised their testimony and said that the tenancy began in September, 2016 and monthly rent is \$2,500.00. The landlord said that no security or pet damage deposit was collected for this tenancy and gave no evidence that a condition inspection report was ever prepared.

The tenant submits that the tenancy began in September, 2015 and a security deposit of \$1,250.00 and pet damage deposit of \$400.00 were paid at the start of the tenancy and are still held by the landlord. The tenant said rent was \$2,500.00 payable on the first of each month and confirmed that no condition inspection report was prepared at any time for this tenancy.

The landlord said that this tenancy ended on April 30, 2019. The landlord submitted into evidence a 10 Day Notice to End Tenancy for Unpaid Rent which is dated May 26, 2019 showing an arrear of \$25,000.00. The landlord claims that the tenant failed to pay rent for this tenancy from August 2018 onwards and calculates the total arrear to be \$22,500.00.

The landlord also submits that the rental property required considerable repairs, cleaning and remediation work and seeks a monetary award in the amount of \$11,456.41 for losses incurred. The landlord submitted into evidence various receipts and invoices as evidence of the work undertaken.

The tenant disputes that there is any rental arrear for this tenancy. The tenant gave rambling testimony about various complaints they had of the landlord and deficiencies in

the rental property. The tenant submits that any unpaid rent was agreed upon with the landlord. The tenant says that they had vacated the rental unit in February 2019

### Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities. I find that the landlord has not met their burden to demonstrate that there is any rental arrear or loss attributable to the tenancy on a balance of probabilities.

The landlord gave rambling, unclear testimony which directly contradicted their own documentary evidence. The landlord repeated on multiple instances, when asked directly, that the monthly rent for this tenancy which began in August 2018 is \$2,005.00. The landlord only amended their testimony when corrected by the other agent who referenced their documentary materials.

The landlord failed to respond to direct questions on basic information such as their relationship to the named corporate landlord, providing responses which did not address the question posed and volunteering irrelevant information.

The copy of the tenancy agreement submitted into evidence by the landlord is unsigned by the parties and provides a start of tenancy date which is disputed by the tenant and was only agreed upon by the landlord after much discussion between the landlord and their agent.

The landlord provided evidence that they issued a 10 Day Notice dated May 26, 2019, nearly a month after their testimony that the tenancy ended on April 30, 2019. The landlord was unable to provide any cogent explanation as to why they issued a 10 Day Notice significantly after the tenancy had ended.

The tenant gave evidence that any non-payment of rent was authorized by the landlord. The tenant questions why, if there was a rental arrear arising in the summer of 2018, there would have been no action taken by the landlord to end the tenancy or inform the tenant of the arrears until the spring of 2019. I find that the tenant's submission has some merit. The actions of the landlord are inconsistent with what would reasonably be expected in a case where there was a rental arrear. I find that the landlord's own testimony, conflicting with much of the documentary evidence, and their explanation of actions inconsistent with those that a reasonable person would be expected to take,

fails to establish on a balance of probabilities that rent was payable and owing or that there is any arrear for this tenancy.

Furthermore, while the landlord makes a monetary claim for damages and loss, in the absence of a proper condition inspection report prepared at the start of the tenancy, I find that there is insufficient evidence that any of the items claimed are attributable to the tenant. I find that the landlord has simply thrown together a collection of receipts and invoices. The landlord has failed to show that any of the amounts presently claimed are the result of a breach on the part of the tenant. The landlord has failed to prepare an inspection report as required under the *Act* and I find that their assertion as to the condition of the rental property prior to the tenancy has little credibility or weight.

I find that the landlord's actions are characterized by their poor organization, failure to abide by the requirements of the *Act* and their general disregard for competent record keeping. Despite the attempts of the landlord's agent SA to provide organized submissions, I find that the absence of key documents pertaining to the tenancy and the shifting narrative provided by the agent MC has cumulatively failed to meet the landlord's evidentiary burden. Consequently, I dismiss the landlord's application in its entirety.

### Conclusion

The landlord's application is dismissed in its entirety 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: November 18, 2019

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Residential Tenancy Branch