



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application made July 31, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

Tenant FB (the “Tenant”) attended the hearing. Tenant ZH did not attend the hearing. I accept the Landlord’s evidence that Tenant ZH was given the Landlord’s application for dispute resolution, notice of hearing and evidence in person on August 20, 2019. The Landlord and Tenant FB were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the hearing the Landlord stated that an error was made in its application in setting out a claim of \$700.00 for unpaid June 2019 rent. The Landlord states that June 2019 rent was paid. The Landlord seeks to amend the application to add a claim for unpaid rent or lost rental income of \$700.00 for July 2019. The Landlord states that the Residential Tenancy Branch (the “RTB”) made the error in setting out the claim for June 2019 unpaid rent on the Landlord’s application. The Landlord also states that it

set out the details of the claim on the application. The Landlord states that the error was not noted until today. The Landlord provides a copy of the tenancy agreement that indicates it was a fixed term tenancy to end July 1, 2019 with the requirement that both Tenants move out of the unit on that date. The Parties agree that the Tenant moved out of the unit on June 30, 2019. The Landlord states that Tenant ZH remained in the unit for the month of July 2019.

The Tenant states that it was only prepared to respond to the unpaid rent claim for June 2019 and is not prepared to respond to any claim for either rent or lost rental income for July 2019. The Tenant's advocate argues that the Tenant procedural rights would be breached resulting in unfairness to the Tenant if the Landlord was allowed to amend its application at the hearing as the Tenant would have not had opportunity to prepare for this claim.

Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can be reasonably anticipated, such as a continuing accrual of unpaid rent, an application may be amended at the hearing. Although it is undisputed that the Tenant moved out of the unit on June 30, 2019 while Tenant SH remained in the unit, the tenancy agreement required both Tenants to vacate by the end of June 2019. As the Landlord gives contradictory evidence of who set out the particulars of the claim, the Landlord's evidence that the RTB was responsible for the error is not credible. Even if the Landlord did not personally set out the particulars in the online application for its claims, the Landlord is ultimately responsible to ensure its claims are properly set out. As the Tenant has a right to know the particulars of a claim before the hearing in order to prepare any dispute to that claim, to accept a new claim at the time of the hearing would prejudice that right. For these reasons, I accept that in the circumstances a claim for rent or lost rental income for July 2019 could not be a reasonably anticipated claim to be brought at the hearing. I therefore decline to accept an amendment to the Landlord's application to include a rent or lost rental income claim in relation to July 2019. The Landlord remains at liberty to make an application for this claim.

Given the undisputed evidence that June 2019 rent was paid dismiss that claim.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on February 25, 2019 for a fixed term to end July 1, 2019 and requiring the Tenants to move out of the unit on that date. Rent of \$1,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Landlord continues to hold this amount. The Tenant moved out of the unit on June 30, 2019. Tenant ZH remained in the unit. The Tenant provided its forwarding address to the Landlord on June 30, 2019 by text. The Landlord responded to this text and subsequently served the Tenant with the dispute materials to this address.

The Landlord states that the Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. The Tenant states that no move-in inspection was offered or conducted. The Landlord did not provide a copy of any move-in inspection as evidence for this hearing. The Landlord states that the Tenant was called the day after June 30, 2019 for a move-out inspection and that the Tenant came to the unit the following day and that the Tenant told the Landlord that the unit was clean. The Landlord states that the Tenant was asked three times to see the unit. The Tenant states that no move-out inspection was offered.

The Landlord states that the Tenant left furniture behind and claims \$30.00 for storing the furniture under the deck of the house containing the rental unit. The Tenant does not dispute this claim. The Landlord states that the furniture was finally taken away by a person that regularly collects some of the Landlord's garbage. The Landlord states that

no receipt was obtained and that she paid this person cash of \$250.00. It is noted that the Landlord has claimed \$200.00 for the cost of this removal.

The Landlord states that the Tenant left the unit unclean and claims cleaning costs of \$90.00. The Landlord states that none of the unit was cleaned. The Landlord states that it provided a copy of a text from the cleaner to support this claimed cost. It is noted that the copy provided to the RTB cannot be read. The Tenant states that although a copy of a text in relation to cleaning costs was provided to the Tenant as evidence it does not provide any identifying phone numbers, names, date or indication that the text was even sent. The Tenant states that it appears to be a text that was never sent anywhere and only photographed.

The Landlord states that the Tenant took a bar fridge from the unit that belonged to the Landlord. The Landlord states that the bar fridge was about 1 and ½ years old and that the Landlord paid around \$300.00 for this fridge. The Landlord claims \$200.00 in compensation for this loss. The Landlord provides no supporting evidence for this claim. The Tenant states that the fridge was taken back to the Landlord on July 9, 2019 and that the Landlord refused to accept the fridge. The Landlord does not deny this refusal, stating that the Tenant came after 10:00 p.m. and that the Tenant could have left the fridge at the Landlord's door. At the hearing the Tenant offered to return the fridge to the Landlord and the Landlord refused stating that the Landlord does not know the condition of the fridge.

The Landlord states that the Tenant changed her notice to move out of the unit and that the Landlord only discovered on June 30, 2019 that the Tenant had moved out of the unit. The Tenant provides a text message from the Landlord dated May 2, 2019 wherein the Landlord informs the Tenant of an upcoming showing of the unit. The Landlord provides a text dated June 19, 2019 informing the Tenant of a showing of the suite for the next day.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. At the end of a tenancy a tenant is required to leave the unit empty of all the tenant's belongings. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss being claimed have been incurred or established. As the Tenant does not dispute the Landlord's claim for **\$30.00** to move the Tenant's furniture out of the unit, I find that the Landlord has substantiated this claim.

As the Landlord provided no evidence to support its claim for costs to haul the garbage out, I find that the Landlord has not substantiated the costs claimed. However, as the Tenant has not disputed that the Tenant left these items at the unit for the Landlord to deal with, I find that the Landlord is entitled to a nominal sum of **\$50.00** for removal costs.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Tenant's evidence of having left the unit clean on June 30, 2019, the Tenant's evidence of a lack of identifying details on the text in relation to cleaning costs, as this text evidence provided to the RTB cannot be read, and as the Landlord did not provide any move-in or move-out inspection reports, I find on a balance of probabilities that the Landlord has not substantiated that the unit was either left unclean as of June 30, 2019 or that the Landlord incurred cleaning costs. I therefore dismiss this claim.

Based on the undisputed evidence that the Landlord refused to accept the return of the bar fridge within a few days after the Tenant moved out of the unit, I find that the

Landlord failed to act reasonably to mitigate any loss in relation to the fridge. I therefore dismiss this claim. As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$180.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Given the Landlord's evidence that the Tenant was expected to have left a clean unit on June 30, 2019 and as the tenancy agreement required the to move out on that date, I find that the fixed term tenancy ended on June 30, 2019. Based on the undisputed evidence that the Tenant moved out on that date, that the Landlord received the Tenant's forwarding address on June 30, 2019 and as the Landlord did not make its application to claim against the security deposit within 15 days of that date, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,400.00**. Deducting the Landlord's entitlement of **\$180.00** from the **\$1,400.00** owed to the Tenant leaves **\$1,220.00** owed to the Tenant.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,220.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 09, 2019

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Residential Tenancy Branch