



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

FFL MNDL-S MNRL-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; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

There was a previous hearing under the file number on the first page of this decision wherein the tenants were awarded a monetary order for the return of the security deposit for this tenancy.

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 of documents was confirmed. The parties each testified that they were in 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 recover their filing fee from the tenants?

### Background and Evidence

This periodic tenancy began in January 2019 and ended on April 1, 2019. The monthly rent was \$2,400.00 payable on the first of each month.

The tenant submits that they gave notice to end the tenancy by a phone call on March 1, 2019. The tenants moved out by April 1, 2019 having paid rent through March 2019.

The landlord submits that the rental unit was left in a state of disarray and uncleanness requiring considerable cleaning, garbage removal, repairs and work to be done. The landlord submitted into evidence copies of photographs of the suite, correspondence with the tenants and invoices from third-party companies who were retained to clean the suite.

### Analysis

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.

A tenant must pay rent when it is due 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 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 30, 2019. I do not find the tenants submission that the landlord forfeited their right to the full April rent by agreeing to end the tenancy to be reasonable or supported in the evidence. The landlord's acknowledgement that the tenancy would be ending does not amount to their abandoning their right to rent payment according to the tenancy agreement. I find that the tenants were obligated to pay the monthly rent in the amount of \$2,400.00 on April 1, 2019. I accept the evidence of the parties that the tenants failed to pay the full rent on that date. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$2,400.00 the unpaid monthly rent for this tenancy.

I accept the evidence of the landlord that the rental unit was left in a state of disrepair and untidiness requiring considerable work to be done. I find that the documentary

evidence including the move-in condition inspection report signed by both parties at the start of the tenancy, the numerous photographs and correspondence between the parties are sufficient to establish that the condition of the suite at the end of the tenancy is attributable to the tenants. Based on the totality of the evidence I find that the damage done to the rental suite goes beyond the expected wear and tear from a tenancy.

While I find that the sum of the invoices submitted into evidence is \$1,022.70, the landlord provided sufficient evidence of the additional costs incurred of their time and labour. I find the landlord's testimony on this point to be sufficient to establish that the total amount of the damages and loss incurred due to the tenants' breach is \$1,200.00. Accordingly, I issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application they may also recover the filing fee from the tenants.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,700.00. 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: December 23, 2019

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Residential Tenancy Branch