



# 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 tenant 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. The tenant was represented by their agent.

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 tenant?

### Background and Evidence

This periodic tenancy began in the summer of 2018 and ended April 26, 2019. The monthly rent was \$500.00 payable on the first of each month. A security deposit was collected and an order

for its return to the tenant was made in an earlier decision under the file number on the first page of this decision. No condition inspection report was prepared at any time for this tenancy.

The tenant submits that they gave written notice to the landlord to end the tenancy on March 23, 2019 and had moved out on April 26, 2019, having paid the full rent through April 2019. The tenant submitted into evidence a screenshot of a text conversation dated March 23, 2019 where they provided the landlord with their intention to move. The landlord disputes the tenant's submission and said that the written notice to end tenancy was given on April 23, 2019. The landlord submitted into evidence a written letter stating the tenant will vacate by April 26, 2019. The typewritten notice includes a handwritten date of April 23, 2019.

The landlord submits that there was damage to the rental unit and seeks a monetary award in the amount of \$3,200.00 for repair costs. The landlord submitted some photographs of damage and invoices for their losses.

The landlord seeks a monetary award for loss of rental income of \$1,250.00 stating that they were given insufficient notice by the tenant to end the tenancy and that they were unable to find a new occupant.

### Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In the earlier written decision the other arbitrator makes a finding that the tenant is entitled to a monetary award including the return of double the security deposit for this tenancy. Therefore, I find that I do not have the jurisdiction to make a new finding regarding the security deposit for this tenancy and dismiss the portions of the landlord's application seeking authorization to retain the deposit.

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.

In the absence of a proper condition inspection report prepared at the start of the tenancy showing the condition of the rental suite I find there is insufficient evidence that any damage to the rental unit was not pre-existing or attributable to the tenancy. I find the photographs submitted by the landlord to be insufficient to establish that there is damage to the suite due to

the actions or negligence of the tenant. Consequently, I dismiss this portion of the landlord's application.

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.

The parties presented conflicting evidence as to when the tenant provided notice to end the tenancy. The tenant submits that they provided their notice on March 23, 2019 while the landlord purports it was April 23, 2019. I find the tenant's submission to be more believable than that of the landlord. The tenant submitted a screenshot with the date of the message clearly indicated. Conversely, the landlord's submission consists of a typewritten message with a date added by hand. The letter of April 23, 2019 confirms the move-out date but its primary focus is on the provision of a forwarding address and demand for return of the deposit. The text is more consistent with confirming that the tenancy rather than giving notice for the first time. I find that the tenant's submission that they provided the landlord with their notice on March 23, 2019 to be more believable and consistent with the evidence.

I find that, as the tenant gave notice of their intention to end the tenancy on March 23, 2019 the effective date of the end of tenancy was April 30, 2019. I accept the evidence that the tenant paid rent in full through April 2019. Accordingly, I find that there is no violation of the tenancy agreement that would give rise to the landlord's claim for a monetary award. Consequently, this portion of the landlord's application is dismissed.

As the landlord's application was unsuccessful the landlord is not entitled to recover the filing fee.

### 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: December 27, 2019

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Residential Tenancy Branch