



# 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 landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

KJ ('landlord') appeared for the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlords' application and evidence. The tenant did not serve the landlords with her evidence in accordance with section 88 of the *Act*. Accordingly, the tenant's evidence package was excluded for the purposes of this hearing. The tenant was allowed to provide oral testimony for this hearing.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

This fixed-term tenancy began on June 2, 2019, and was to end on June 30, 2020. The tenant moved out early on October 31, 2019. Monthly rent was set at \$1,750.00, payable on the first of the month. The tenant paid a security deposit in the amount of \$875.00, which the landlord still holds.

The tenant does not dispute the fact that she had moved out before the end of the fixed-term agreement, but testified that she did so because she felt the landlord misrepresented the rental unit as “peaceful and serene”. The tenant testified that she had to move out as the noise and disturbance she experienced affected her mental health and sleep. The tenant testified that the walls were thin, and she could hear the children yelling and making noise, as well as cupboards, dining room chairs, and screaming and fighting in the other part of the house. The tenant testified that she had attempted to address the issue with the landlord, but she felt threatened. The tenant testified that she had contacted the police, who informed her that they were familiar with the address, and the family. The tenant testified that she was terrified. The tenant testified that upon the recommendation of her psychiatrist, she moved out.

The landlords dispute the tenant’s testimony that she was misled. The landlord testified that the home was built in 2005, and was quiet, and compliant with code. The landlord testified in the hearing that the tenant was advised about the children residing in the home, and that she had replied that she had no issues with this. The landlord testified that the new, current tenant is very happy. The landlord testified that due to the early end of this tenancy they suffered a loss of rental income for one month. The landlord testified that they were able to re-rent the unit for \$1,800.00 per month as of December 1, 2019.

The landlord is also seeking a monetary order in the amount of \$100.00 for a broken toilet seat, and \$775.00 for the repair and repainting of the damaged walls. The landlord performed a move-in inspection, but was unable to perform a move-out inspection with the tenant as the tenant moved out.

The tenant disputes that she had broken the toilet seat. The tenant testified that she did hang up a couple of pictures on the wall, causing pin and nail holes.

## **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*
- (c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45** (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

While the tenant provided reasons for why she ended this tenancy, she did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regard to this

tenancy. The tenant moved out 8 months earlier than the date specified in the tenancy agreement.

Although I sympathize with the tenant that her expectations for this tenancy were not met, and that her mental and physical health was affected, I am not satisfied that the tenant provided sufficient evidence to support that the landlord misrepresented the rental unit to her. Although the tenant attempted to discuss the matter with the landlords, she did not file any applications for dispute resolution after being unsuccessful in these attempts. The tenant simply moved out instead of continuing the tenancy, and filing an application for dispute. I find that that the tenant's decision to end this tenancy was not done in compliance with the *Act*.

I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlords' monetary loss for the remainder of this term, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$1,750.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

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 or 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 this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenant caused the landlords the losses claimed.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties.

Despite the fact that there was damage to the rental unit, I find that the tenant disputed the landlord's claim that she had damaged the toilet seat. In light of the conflicting evidence provided, and taking in consideration that the party claiming the loss bears the burden of proof, I find that the landlords have not provided sufficient evidence to support

that the tenant caused the damage to the toilet seat. On this basis, I dismiss the landlord's monetary claim for damage to the toilet seat without leave to reapply.

Although the tenant did admit to hanging pictures on the wall, causing pin holes and marks to the walls, I am not satisfied that the landlords had provided sufficient evidence to support that the tenant is responsible for the entire loss claimed in the amount of \$775.00.

I find that the tenant did cause some damage to the walls. Accordingly, I find the landlords are entitled to monetary compensation for the losses associated with the damage. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlords compensation in the amount of \$200.00 for this damage.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$875.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$1,125.00 in the landlords' favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in satisfaction of their monetary claim. The landlord's monetary claim for damage to the toilet is dismissed without leave to reapply.

Loss of Rent for November 2019	\$1,750.00
Damage to Wall	200.00
Recovery of Half of the Filing Fee	50.00
Less Security Deposit	-875.00
<b>Total Monetary Award</b>	<b>\$1,125.00</b>

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: March 11, 2020

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Residential Tenancy Branch