



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$1,845.00 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord, a witness for the landlord MS (witness), and the tenant attended the teleconference hearing and gave affirmed testimony. The landlord and tenant were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed service of all relevant documentary evidence and confirmed that they had the opportunity to review documentary evidence prior to the hearing. I find the tenant was sufficiently served under the Act as a result. The tenant did not serve any documentary evidence for my consideration.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed to amend the name of the tenant as the given name and surname of the tenant had been inadvertently reversed. Therefore, pursuant to section 64(3)(c) of the Act the given name of the tenant was corrected.

In addition to the above, the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties and

that any applicable orders would be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of a tenancy agreement was not submitted in evidence. The parties agreed; however, that a written tenancy did exist and began on May 1, 2019 and was for a fixed-term until April 30, 2020. The parties disputed how the tenancy ended. The tenant stated that the landlord verbally advised the tenant to vacate the rental unit, which the landlord vehemently refuted. The landlord testified that the tenant provided written notice to end the tenancy on October 15, 2019 effective October 31, 2019, which only provided 15 days notice from the tenant to end the tenancy.

At the outset of the hearing the landlord reduced a portion of their monetary claim, which relates to item 1, which will be described further below. The amount has been reduced for item 1 from a full month of rent of \$1,800.00, to ½ of a month rent for November 1-14, 2019, inclusive, in the amount of \$900.00. I find that a reduction in the landlord's monetary claim does not prejudice the tenant in any way.

The landlord's reduced claim is for \$1,545.02 and is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of November 1-14, 2019 rent	\$900.00
2. Damage to closet door	\$75.00
3. Unpaid strata fines	\$200.00
4. Kijiji ad for re-renting rental unit	\$92.30
5. Cost of printing pictures for dispute resolution	\$27.72
6. Cleaning fee	\$250.00
<b>TOTAL</b>	<b>\$1,545.02</b>

Regarding item 1, the landlord has claimed \$900.00 for loss of rent for the period of November 1-14, 2019. Landlord testified that they could not immediately re-rent the

rental unit due to the condition of the rental unit left by the tenant. The parties disagreed with whether a Condition Inspection Report (CIR) was completed at the start of the tenancy. The landlord testified that the CIR was completed with the tenant at the start of the tenancy and that the tenant refused to sign the CIR, although the tenant was present. The tenant denied that an incoming CIR was completed and stated that the landlord was not being truthful that the tenant was present for the incoming CIR. As a result of the above, the witness for the landlord was called to testify and the witness was affirmed. The witness testified under oath that during the incoming CIR the tenant was not present, which I find contradicts the landlord's testimony. The parties were advised that I would deal with the CIR further in my decision.

The landlord stated that they were able to secure new tenants effective November 15, 2019. A copy of the new tenancy agreement was submitted in evidence for my consideration, which supports that the new tenants agreed to pay the same amount of rent as the tenant before me, which was \$1,800.00 per month. The landlord explained that this resulted in \$900.00 being paid for the period of November 15-30, 2019, inclusive, and it is for this reason that the landlord is claiming \$900.00 for November 1-14, 2019, inclusive.

In support of the condition of the rental unit at the end of the tenancy, the landlord referred to the outgoing CIR, which the tenant originally stated they had signed and later changed their testimony to say they might not have signed the outgoing CIR. I note that the outgoing CIR indicates that the tenant refused to sign it and is dated by the landlord on October 31, 2019. The tenant agreed that the outgoing CIR was completed on October 31, 2019. The landlord referred to several colour photos showing what appears to be a dirty fridge and other areas of the rental unit that were not cleaned by the tenant, according to the landlord. The tenant testified that they cleaned the rental unit, the tenant failed to provide any documentary evidence such as photos in support for my consideration.

Regarding item number 2, the landlord has claimed \$75.00 for the cost to repair a damaged closet door. This portion of the landlord's claim was dismissed during the hearing as the landlord neglected to indicate that the door was damaged on the outgoing CIR, which I will further address later in this decision.

Regarding item number 3, the landlord has claimed \$200.00 for unpaid strata fines. The landlord submitted documentary evidence from the strata corporation (strata) in support that \$200.00 was owing at the end of the tenancy. During the hearing, both parties agreed that the tenant paid \$200.00 in strata fines; however, the landlord stated that the

tenant owed \$200.00 of the \$400.00 in strata fines. The tenant's response to this portion of the landlord's claim was that they didn't pay the remaining \$200.00 in strata fines as they were not aware of them and had not been notified by the landlord. The landlord stated that the tenant was not notified earlier because the strata had not notified the landlord of the remaining \$200.00 balance owing for the strata fines during the time in which the tenant occupied the rental unit.

Regarding item number 4, the landlord has claimed \$92.30 for the cost of advertising for a new tenant once the landlord had received written notice from the tenant indicating that they were vacating the rental unit. Although the parties disagreed on whether the tenant provided notice to the landlord, a receipt was provided in evidence by the landlord for the cost of \$92.30 as claimed for this portion of the landlord's claim. The tenant's response for this item was that the tenant had no idea why the landlord would have to post an ad to re-rent the rental unit. The landlord's response was that an ad was necessary to secure a new tenant, which I will deal with further below.

Regarding item number 5, the landlord has claimed \$27.72 for the cost to print photos related to this dispute resolution proceeding. This portion of the landlord's claim was dismissed in full during the hearing as I find that there is no remedy under the Act for the cost of photos in relation to a dispute resolution hearing.

Regarding item number 6, the landlord has claimed \$250.00 for the cost of a cleaning fee. In support of this amount the landlord submitted a receipt from the name of RB for cleaning costs in the amount being claimed. The landlord testified that the fridge was dirty, there were dust on the baseboards, there were shower stains, a dirty sink, and so much mess that the landlord did not want to touch it, so the landlord hired a cleaner to do so. The tenant's response was that they cleaned on October the 27<sup>th</sup> and that any dust would have been from the days between October 27<sup>th</sup> and the 31<sup>st</sup> when the tenancy ended. Several photos were referred to, which I will deal with later below. The tenant testified that they did their best to clean the rental unit and at the outgoing condition inspection report was not professionally documented by the landlord.

Regarding the forwarding address of the tenant, the tenant testified that they provided it orally to the landlord and that the landlord wrote it down, which the landlord disputed. The landlord testified that the tenant provided their written forwarding address by registered mail and that the landlord submitted their application a few days later after receiving the written forwarding address of the tenant by registered mail.

## Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, regarding the incoming CIR. Due to the landlord's witness providing contradictory evidence that the tenant was not present, I afford the incoming CIR no weight in this decision as I find it more likely than not, that the tenant was not present and that the incoming CIR is not reliable as a result and does not represent an agreed upon state of the condition of the rental unit at the start of the tenancy.

I will now deal with how the tenancy ended. As the tenant was in a fixed-term tenancy and based on the tenant providing no documentary evidence to prove to the contrary, I find the tenant breached the fixed-term tenancy by vacating on October 31, 2019 versus April 30, 2020. I prefer the landlord's version of events related to the end of tenancy over that of the tenant, as I find the tenant's version is not reasonable and is not supported by documentary evidence. The only documentary evidence I have before me is the fixed-term tenancy that indicates that the tenant should not have vacated prior to April 30, 2020. Therefore, I find the landlord has met the burden of proof and that the tenant breached section 45(2) of the Act, which applies and states:

### **Tenant's notice**

**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.

Based on the above, I find the tenant was not entitled to end the fixed-term early because there was no evidence of a signed mutual agreement between the parties to end the tenancy earlier than April 30, 2020.

**Item 1** - The landlord has claimed \$900.00 for loss of rent for the period of November 1-14, 2019. I accept the landlord's testimony that explained that the \$900.00 being paid for the period of November 15-30, 2019, inclusive, and it is for this reason that the landlord is claiming \$900.00 for November 1-14, 2019, inclusive. As I have rejected the tenant's version of events and have found that they did not have authority to provide notice to end the tenancy earlier than April 30, 2020, I find that the landlord suffered a loss created by the tenant vacating the rental unit on October 31, 2019.

Section 7 of the Act and part four of the test for damages or loss requires the landlord in this case to minimize their loss, which I find the landlord did by securing new tenants effective November 15, 2019. Therefore, I find the landlord has met the burden of proof and that the tenant owes the landlord \$900.00 as claimed for loss of rent for the period claimed of November 1-14, 2019, inclusive. I grant the amount of **\$900.00** for this item accordingly.

**Item 2** - The landlord has claimed \$75.00 for the cost to repair a damaged closet door. This portion of the landlord's claim was dismissed during the hearing as the landlord neglected to indicate that the door was damaged on the outgoing CIR. As the CIR is the agreed upon condition of the rental unit under the Act, I find that the landlord has not met the burden of proof and that this item fails as a result. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 3** - The landlord has claimed \$200.00 for unpaid strata fines. While I accept the undisputed evidence that the tenant has paid \$200.00 of the \$400.00 total in strata fines, I am satisfied that the landlord has provided sufficient evidence, which includes

evidence from the strata that \$200.00 remained owing at the end of the tenancy time period. Therefore, I find the tenant is liable for the strata fines as the tenant was occupying the rental unit and owes the landlord \$200.00 as a result. I grant the amount of **\$200.00** for this item accordingly.

**Item 4** - The landlord has claimed \$92.30 for the cost of advertising for a new tenant once the landlord had received written notice from the tenant indicating that they were vacating the rental unit. I have considered the tenant's response for this item which was that the tenant had no idea why the landlord would have to post an ad to re-rent the rental unit. I find the rental ad was required for the landlord to comply with their section 7 obligation under the Act and in keeping with part four of the test for damages or loss. Therefore, I find the landlord has met the burden of proof and that the tenant owes the landlord the amount claimed of \$92.30. I grant the amount of **\$92.30** for this item accordingly.

**Item 5** - The landlord has claimed \$27.72 for the cost to print photos related to this dispute resolution proceeding. This portion of the landlord's claim was dismissed in full during the hearing as I find that there is no remedy under the Act for the cost of photos related to applying for a dispute resolution hearing.

**Item 6** - The landlord has claimed \$250.00 for the cost of cleaning. After considering the invoice and photographic evidence, I find the testimony of the tenant does not match the photographic evidence before me and as a result, I prefer the testimony of the landlord, which I find does match the photographic evidence and the outgoing CIR. Therefore, I find the landlord has met the burden of proof and that the tenant owes the landlord the amount claimed of \$250.00 for cleaning costs. I grant the amount of **\$250.00** for this item accordingly.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$1,542.30** and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's security deposit of \$900.00 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$642.30**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$1,542.30. The landlord has been authorized to retain the tenant's full security deposit of \$900.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$642.30. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 3, 2020

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Residential Tenancy Branch