



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with a landlord's application for compensation for unpaid rent and utilities, damage and missing furniture. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant received the landlord's hearing documents, including evidence, via registered mail. I also confirmed the tenant had not submitted any evidence prior to the hearing and intended to provide her position orally during the hearing.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions.

### Preliminary and Procedural Matters

The landlord's agent sought to amend the monetary claim to reflect the following. The landlord withdrew the claim for unpaid utilities as the utility account was paid by the tenant after the landlords filed their claim. The landlord's agent also withdrew the request for \$100.00 for a piece of missing furniture that was subsequently returned by the tenant. The landlord also reduced the claim for unpaid rent to reflect a partial payment received from the tenant on \$464.75 on January 2, 2020. Since the landlord was reducing the claim, I amended the application accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the compensation in the amounts claimed, as amended?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The one year fixed term tenancy started on October 1, 2015 and continued on a month to month basis upon expiration of the fixed term. The tenant paid a security deposit of \$650.00. The monthly rent, payable on the first day of every month, was originally set at \$1300.00. The rent was subsequently increased by way of two Notices of Rent Increase to increase the rent to \$1350.00 effective January 1, 2018 and to \$1383.75 effective January 1, 2019.

The tenant gave a notice to end tenancy on October 15, 2019. The tenant sought to end the tenancy on November 15, 2019 but the landlord was not agreeable to ending the tenancy mid-month and informed the tenant that it would end on November 30, 2019.

The tenant did not pay any rent when it was due on November 1, 2019.

The tenant vacated her possessions from the rental unit on November 21, 2019 and the landlord set up a move-out inspection with her for November 22, 2019. Both parties participated in the move-out inspection and a move-out inspection report was prepared. The tenant did not authorize the landlord to retain the security deposit on the move-out inspection report.

The landlord filed this Application for Dispute Resolution within 15 days of the move-out inspection seeking to recover unpaid rent for November 2019 and damage, among other things. Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

### **Unpaid Rent -- \$1383.75 less \$464.75 payment**

The landlord submitted the tenant owed \$1383.75 as of November 1, 2019 under their tenancy agreement and subsequent rent increases and she failed to pay anything until the partial payment of \$464.75 was received on January 2, 2020.

The tenant was of the position she had rent to pay on her new rental accommodation, and she did not have the money to pay rent for both units. The tenant had requested to end the tenancy as of November 15, 2019 but the landlord refused. The tenant moved out of the rental unit on November 21, 2019 and the landlord agreed to end the tenancy as of November 22, 2019 so she should not be responsible for paying rent for the days for which she was not in possession of the rental unit. Further, the new tenants were moving in right after she vacated. The tenant stated she is not a criminal and pays her bills which is why she gave the landlord \$464.74. The tenant explained that this amount was calculated by her as being the rent for November 2019 pro-rated to November 22, 2019, less the security deposit.

The landlord's agent denied agreeing to release the tenant from her obligation to pay rent as of November 22, 2019. Rather, he explained that she notified him that she was ready for the move-out inspection, so he set it up with her for November 22, 2019. It would not be prudent to leave her in possession of the rental unit after the move-out inspection is done. Further, the new tenants were given possession of the unit in the last few days of November 2019 as a matter of convenience, but their tenancy did not effectively start until December 1, 2019 and they did not pay any rent for November 2019.

### **Damage to walls -- \$125.00**

The landlord submitted that there were three holes in the living room wall from the mounting of a TV that were significant in size as well as several nicks in a wall in a bedroom that will require filling, sanding and repainting. The landlord acknowledged the repairs have not yet been made, as the new tenants were moving in shortly after the tenancy ended, and this work will be done as part of a repainting project in the future, but this claim represents the tenant's contribution to the cost to do so for the damage for which she is responsible for causing during the tenancy.

As for the amount claimed, I noted that I was not in receipt of any documentation to support the amount claimed. The landlord's agent stated he obtained a verbal estimate.

The tenant did not deny the three holes in the living room wall and nicks in the bedroom wall but took the position the landlord's claim was excessive. The tenant stated the landlord did not request compensation from her at the move-out inspection and had she known he would be claiming this amount against her she would have filled the holes by buying a container of wall filler for a few dollars. The tenant also pointed out that her tenancy was four years in duration and that the rental unit needs repainting in any event.

**Missing furniture -- \$100.00**

The landlord's agent submitted that the owners had left some furniture in the basement of the rental unit and a nightstand was missing when the tenant moved out. I noted that I did not have any documentary evidence to demonstrate the value of the missing nightstand. The landlord's agent stated he obtained a value of \$100.00 from the owners.

The tenant agreed the owners left old furniture in the basement and her movers removed the nightstand from the rental unit and took it to her new home in error. She rejected the nightstand and the movers took it away. The tenant stated the nightstand was old and of no value.

The tenant also submitted that the landlord has not taking into account that she left window coverings and an air conditioning unit at the rental unit. The landlord acknowledged this to be true and these items were left in the rental unit for the new tenants to use. The landlord suggested these items may offset the missing nightstand but that it did not offset the wall damage.

**Filing fee -- \$100.00**

The landlord seeks recovery of the \$100.00 paid for this application since the tenant did not satisfy the unpaid rent and utilities within 15 days of the tenancy ending and the landlord had to make this Application for Dispute Resolution within that time to make a claim against the security deposit.

The tenant was of the position the landlord could have avoided the filing fee by contacting her about the claim for damage and the missing furniture. Also, she always pays her bills and she eventually paid the utilities and the rent she owed the landlord.

### Analysis

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 section 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 whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

### **Unpaid rent**

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. There are very limited and specific circumstances when a tenant may withhold rent otherwise payable to the landlord.

It was undisputed that pursuant to their tenancy agreement and subsequent Notices of Rent Increase, the tenant was required to pay rent of \$1383.75 on the first day of every month from January 1, 2019 onwards.

The tenant gave a notice to end tenancy on October 15, 2019. Since the tenancy was in a month to month status at that time, and rent was due on the first of the month, section 45 of the Act provides that the effective date for the notice to end tenancy would be no earlier than November 30, 2019. Section 53 of the Act provides that where an effective date on a notice to end tenancy is incorrect, the effective date automatically changes to comply with the Act. Based on the tenant's notice to end tenancy, I find the tenancy was set to end on November 30, 2019 as provided under the Act and the tenant remained obligated to pay the full amount of rent payable on November 1, 2019. The tenant failed to do so and this is a violation of the Act.

The tenant submitted the landlord agreed to end the tenancy earlier on November 22, 2019; however, that position was refuted by the landlord's agent and I find the landlord's agent provided a reasonable explanation for scheduling the move-out inspection on November 22, 2019. I find the scheduling of a move-out inspection with the tenant when the tenant has finished vacating the unit does not amount to an waiver to entitlement to all of the rent that was due on November 1, 2019.

An inability to pay rent due to financial circumstances of the tenant is not a legal basis for not paying rent that is otherwise payable and I was not provided any other evidence to suggest the tenant had a legal right to withhold rent otherwise payable to the landlord.

In light of the above, I grant the landlord's request to recover unpaid rent for the month of November 2019 in the amount of \$1383.75 less the partial payment of \$464.75 for a net award of \$919.00.

### **Wall damage**

It was undisputed that there were a few holes and nicks in the walls at the end of the tenancy. The issue under dispute was the amount claimed for compensation. The tenant was of the position the amount claimed was excessive.

Although I was provided a copy of the move-out inspection report that indicates three holes and nicks in the wall, as put forth by the landlord, I was not provided evidence to corroborate the amount claimed, such as a receipt, invoice or written estimate or testimony of a contractor. Nor, was I provided photographs so that I may determine the reasonableness of the claim. Therefore, I find I am not satisfied the tenant is responsible for compensating the landlord \$125.00 for wall damage and I dismiss this portion of the landlord's claim.

### **Missing furniture**

Term 3 of the tenancy agreement indicates that there is no furniture provided to the tenant; however, there are pieces of furniture identified on the condition inspection report. It is unclear to me whether these pieces of furniture were provided to the tenant as part of her tenancy agreement or merely stored in the basement by the owners based on the conflicting information in the documents provided to me. In any event, it was undisputed that there were pieces of furniture in the basement of the rental unit at the start of the tenancy, including a nightstand, and the nightstand was removed from

the rental unit at the end of the tenancy by the tenant or her movers. The parties were in dispute as to the value of the missing nightstand.

As the claimant, the landlord has the burden to establish the value of the loss. I heard unopposed testimony that the nightstand was old. As with many things that are old, they may be worth nothing or a great deal. I find the opposed oral testimony in the absence of any corroborating evidence does not satisfy me that the nightstand had a value of \$100.00 as claimed. Therefore, I dismiss this portion of the landlord's claim against the tenant.

### **Filing fee**

As provided under section 72 of the Act, I have the discretion to order one party to pay the other party for the filing fee. In this case, I accept that the landlord was owed for rent and there were still outstanding utilities when the landlord was required to make a claim against the security deposit within 15 days of the tenancy ending. Although the tenant did pay the utilities after the landlord filed, the tenant only paid a portion of the unpaid rent. Therefore, I award the filing fee to the landlord.

### **Security deposit**

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

### **Monetary Order**

I provide the landlord a Monetary Order in keeping with all of my findings and awards above to serve upon the tenant, calculated as follows:

Unpaid rent for November 2019	\$919.00
Filing fee	100.00
Less: security deposit	<u>(650.00)</u>
Monetary Order	\$369.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$369.00 to serve and enforce upon the tenant.

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: April 29, 2020

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Residential Tenancy Branch