



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE  
WOLSTENCRAFT and [tenant name suppressed to  
protect privacy]

## **DECISION**

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

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 tenants acknowledged receipt of evidence submitted by the landlord. O.O. testified that she had some evidence but did not provide it to the landlord. Residential Tenancy Branch Rule of Procedure 3.15 addresses the issue as follows:

3.15 Respondent's evidence provided in single package Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. Residential Tenancy Branch Rules of Procedure These Rules of Procedure take effect at 4:30 pm PST on March 5, 2020 page 17 The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be **received by the applicant** and the Residential Tenancy Branch **not less than seven days before the**

**hearing.** As the tenants did not provide the landlord copies of their evidence, it has not been considered in making this decision. This was explained to the tenants and she acknowledged that she understood.

**Issue to be Decided**

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

**Background, Evidence**

The landlord's testimony is as follows. The tenancy began on June 1, 2017 and ended on December 5, 2019. The tenant was obligated to pay \$1252.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$587.50 security deposit which the landlord still holds. Written condition inspection reports were done at move in and move out with the tenant present.

The landlord testified that the tenant left the unit dirty at move out. The landlord testified that the suite needed to be cleaned and that the carpets were also in need of cleaning. The landlord testified that on November 29, 2019 the tenant advised that she would be moving out on December 1, 2019.

The landlord testified that she immediately posted an advertisement for the suite. The landlord testified that it was a slow period near Christmas and only showed the suite 4-5 times. The landlord testified that she had someone view the suite on January 1, 2020 who rented it for January 16, 2020.

The landlord is applying for the following:

|    |                                 |           |
|----|---------------------------------|-----------|
| 1. | Loss of December 2019 Rent      | \$1252.00 |
| 2. | Loss of January 1-15, 2020 Rent | 626.00    |
| 3. | Carpet Cleaning                 | 99.75     |
| 4. | Suite Cleaning                  | 125.00    |
| 5. | Filing Fee                      | 100.00    |
| 6. | Less Deposit                    | -587.50   |

|     |       |                  |
|-----|-------|------------------|
| 7.  |       |                  |
| 8.  |       |                  |
| 9.  |       |                  |
| 10. |       |                  |
|     | Total | <b>\$1615.25</b> |

O.O gave the following testimony on behalf of the tenants. O.O. testified that she sent a text message on October 31, 2019 to the landlord that she would be moving out December 1, 2019 but did not receive a response. O.O. testified that she tried her best to clean the unit but did not hire anyone to clean it. O.O. testified that the landlord was aware that she would be moving out and doesn't feel she should have to pay for any of the claims.

### 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Loss of Rent for December 2019 and January 1-15, 2020

Sections 45 and 52 of the *Act* addresses this issue as follows.

### **Tenant's notice**

- 45** (1)A tenant may end a periodic 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, and
  - (b)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

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Based on the documentation before me, I find that the tenant did not provide the appropriate and sufficient notice as required under section 45 or in a format that is in accordance with section 52. I further find that the landlord acted in accordance with section 7(2) of the Act to mitigate their losses by immediately posting an advertisement and making all reasonable efforts to re-rent the unit, however; I find that the loss of revenue for December's rent *only* is to be awarded in the amount of \$1252.00 as the landlord had the entire month to attempt to rent the unit.

Carpet and Suite Cleaning \$224.75

Although the tenant disputes this claim, the landlord provided, photos, receipts and the condition inspection report to support their claim. Based on the documentary evidence before me, I find that the landlord is entitled to \$224.75 for carpet and suite cleaning as claimed.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

|    |                            |           |
|----|----------------------------|-----------|
| 1. | Loss of December 2019 Rent | \$1252.00 |
| 2. | Carpet Cleaning            | 99.75     |
| 3. | Suite Cleaning             | 125.00    |
| 4. | Filing Fee                 | 100.00    |
| 5. | Less Deposit               | -587.50   |
| 6. |                            |           |

|     |       |                 |
|-----|-------|-----------------|
| 7.  |       |                 |
| 8.  |       |                 |
| 9.  |       |                 |
| 10. |       |                 |
|     | Total | <b>\$989.25</b> |

I order that the landlord retain the \$587.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$989.25. This order may be filed in the Small Claims 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: May 22, 2020

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Residential Tenancy Branch