



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony from the landlord, and no one for the tenant joined the call. The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing by email on May 9, 2020.

The tenant joined the call at 2:07 p.m., during the landlord's testimony, stating that she believed she would receive a call to join the hearing and then realized that she had to dial in to join the call. The tenant also gave affirmed testimony.

Both parties have provided evidentiary material, all of which has been exchanged and has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for an order permitting the landlord to keep the security deposit or pet damage deposit, stating that the deposits have been returned in full to the tenant.

### Issues to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on November 1, 2019 and expired on March 31, 2020 thereafter reverting to a month-to-month tenancy. The landlord has M.S. and has difficulty with his memory but believes the tenant vacated the rental unit on April 30, 2020. Rent in the amount of \$2,050.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit from the tenant, which the landlord believes was \$1,025.00. The entire deposits were returned to the tenant. The rental unit is a single family home, and a copy of the tenancy agreement has been provided as evidence for this hearing. No move-in or move-out condition inspection reports were completed.

The landlord further testified that the tenant gave notice to end the tenancy, and a copy has been provided for this hearing. It is dated March 29, 2020 and contains an effective date of vacancy of May 1, 2020 and a forwarding address of the tenant. The landlord believes he received it by email but is not certain of when.

The tenant had said that she would be moved out by noon on April 30, 2020, and the landlord travelled with his mother from his home-town to the rental unit and found the tenant still there partying and kids playing. The landlord had decided to convert the rental home into 2 suites and had tenants ready to move in, but they couldn't due to the damage left by the tenant. Both tenants were supposed to move in on May 1, 2020 but there was too much damage. After the damages were repaired the new tenants moved into their respective suites and the landlord gave each a pro-rated amount of \$90.00 for one suite and \$933.20 for the other suite. Due to the tenant's failure to leave on time and leave the rental unit undamaged, the landlord claims loss of rental revenue for those pro-rated amounts. Letters from the new tenants have been provided as evidence.

The landlord also claims \$379.26 for a broken fridge, and a copy of a receipt has been provided for its repair. The tenant didn't notify the landlord that the fridge wasn't working, or he would have had it repaired and it probably got worse over time. When the landlord arrived at the end of the tenancy, the tenant was using coolers for her food.

The bathtub and shower faucet were also damaged. The landlord had to get a plumber, and has provided an invoice for \$342.48 , which the landlord claims as against the tenant.

Photographs have also been provided for this hearing.

**The tenant** testified that she originally moved into the rental unit on April 15, 2019 and rent was \$2,000.00 per month. The landlord illegally increased rent, and the copy of the tenancy agreement provided by the landlord for this hearing is actually a second tenancy agreement signed by the parties. The landlord wanted to increase it by \$100.00 per month, but the new tenancy agreement specifies \$50.00 per month, which the tenant paid since November 1, 2019.

The landlord tried to sell the rental unit and when he learned that it reverted to a month-to-month contract he sent an email to the tenant stating that she had to vacate in 60 days. However, the realtor told the tenant that it hadn't sold, but the landlord wanted to rent for more money and considered dividing it into 2 units.

The tenant gave notice to end the tenancy by mail, but cannot remember when it was sent. The landlord said it was a couple days late, which it probably was. The tenant thought she had until midnight to finish cleaning on April 30, 2020 but the landlord and his mother showed up and threatened the tenant to get out. The tenant was expecting a move-out condition inspection.

Electricians and plumbers were attending, which the landlord told the tenant was none of her business, but the landlord also said he was going to make the home into 2 units to make more money. The tenant has seen the letters from the new tenants about rent being pro-rated, however the tenant testified that that just gave him extra time to renovate to be able to rent to 2 tenants.

During the tenancy the fridge stopped working and the landlord was informed. He called a fellow to look at it who took the fridge apart to get at ice which had built up around the fan. The tenant kept in touch with the repair fellow, and copies of messages have been provided. The fridge and bathroom faucets were working fine when the tenant left. The tenant has also provided photographs.

The tenant received the deposits back from the landlord at the end of the 15 day period.

### Analysis

Firstly, a tenant must give notice to end a tenancy before the date rent is payable under the tenancy agreement, and must be effective no later than one month later. In this case, rent was payable on the 1<sup>st</sup> day of the month and the tenant's notice to vacate is

dated March 29, 2020 effective May 1, 2020. Neither party has satisfied me how or when the landlord received it. Further, the *Act* states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Since rent was payable on the 1<sup>st</sup> day of the month, it is effective at 1:00 p.m. on April 30, 2020, and I find that the tenant gave notice before the date rent was payable for May.

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The landlord claims loss of rental revenue of \$90.00 for one suite and \$933.20 for another suite and testified that the tenant left the rental unit in such a condition that the new tenants could not move into the suites created by the landlord. I am not satisfied that converting a single family dwelling into 2 suites would not have contributed to the delay in re-renting. I do not accept that the tenant was responsible for any delay in re-renting, considering that the landlord already had plans to make the conversion. I dismiss the landlord's application for loss of rental revenue.

The *Residential Tenancy Act* requires a tenant to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

The landlord claims \$379.26 for the fridge repair and has provided an Invoice, which I have reviewed, and nowhere does it indicate a date. The tenant testified that it was repaired during the tenancy and she kept in touch with the repair person. I accept that testimony, and I am satisfied that the landlord was aware of the fridge repair and has failed to establish that the damage was caused by the tenant. I dismiss the application for payment of the Invoice.

With respect to the \$342.48 plumbing bill, it is dated May 14, 2020 and states that the internal components of the tub diverter were damaged beyond repair, as well as a wall-mounted handle. Both parties have provided photographs. The purpose of the move-in and move-out inspection reports is for the parties to go through the rental unit together and inspect. Since there are no reports, and given that the tenant has disputed the damage

testifying that there were no problems when she vacated, and has provided photographic evidence, and considering the date of the Invoice, I am not satisfied that any damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's claim.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee, and the landlord's application is dismissed in its entirety without leave to reapply.

### Conclusion

For the reasons set out above, the landlord's application is hereby 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: September 04, 2020

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Residential Tenancy Branch