



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Noort Investments Ltd. and  
[tenant name suppressed to protect privacy]

## DECISION

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

### Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on December 7, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on December 12, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant to Residential Tenancy Policy Guideline 12 the failure or refusal of a party to accept delivery does not override the deeming provisions of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

### Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began on February 15, 2020. Monthly rent was \$1,650.00 payable on the first of each month. A security deposit for \$825.00 was collected and still held by the landlord. The signed tenancy agreement provides that the tenancy was to continue until February 28, 2021.

The tenant abandoned the rental unit without providing the landlord notice sometime in October, 2020. The tenant failed to pay rent for the month of October and the landlord was unable to find a new occupant until December 1, 2020. The landlord submits that they incurred rental income losses of \$3,300.00 for the months of October and November 2020.

The landlord says that due to the tenant abandoning the rental unit they were unable to conduct a move-out inspection but the rental unit was left in a state of disarray with significant fire and smoke damage caused by the tenant, originating from the kitchen stove. The landlord submitted the inspection report completed in the absence of the tenant and the move-in report showing that there were no issues at the start of the tenancy. The landlord submits that the fire and smoke damage was so significant that it required replacement of appliances, fixtures, and cabinetry as well as repainting portions of the suite.

The landlord submits that the total cost of the work done was \$2,884.90. The landlord submitted photographs of the damage as well as receipts and invoices for the work done to rectify the issues.

### 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 prove the existence of the damage/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.

I accept the undisputed evidence of the landlord that the tenant abandoned the suite without providing notice and the landlord incurred loss of rental income. I accept the landlord's testimony that they mitigated the damage the best they could by fixing the suite and renting it out to new occupants at the earliest opportunity. The landlord still incurred loss of rental income for two months due to the tenant breaching the fixed-term agreement by leaving and I find the landlord is therefore entitled to a monetary award in the amount of \$3,300.00.

I accept the evidence of the landlord that the tenant caused significant damage to the rental unit through a fire inside of the unit. I accept the evidence that the damage was so great that it required replacement of appliances and fixtures. I find that the invoices submitted and costs claimed by the landlord to be proportional to the damage shown and reasonable to restore the suite to its pre-tenancy condition. I therefore issue a monetary award in the landlord's favour in the amount of \$2,884.90 for repairs, cleaning and work done to the rental unit.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$5,459.90. The tenant must be served with this Order as soon as possible. Should the tenant 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 25, 2021

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Residential Tenancy Branch