



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

On December 7, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s agent, an interpreter, and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 22, 2019 and continued as a month-to-month tenancy. The rent was \$1,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$600.00 and a pet damage deposit in the amount of \$600.00.

The Landlord submitted that the Tenant provided a notice to end tenancy via text and email on November 1, 2020 and advised that they would be moving out on November 26, 2020. The Landlord stated that, during a subsequent conversation with the Tenant, the Landlord advised the Tenant that one full month's notice to end the tenancy was required.

The Landlord testified that the Tenant paid rent for November 2020 and after receiving the notice to end tenancy from the Tenant, that the Landlord began advertising the unit for rent via the internet and social media as of November 2, 2020.

The Landlord stated that due to the Tenant's non-cooperation with showing the rental unit, he was unable to rent the unit to new tenants until January 1, 2021.

The Landlord is requesting compensation for the loss of rent in December 2020 as the Tenant failed to provide proper notice to end the tenancy at the end of November and as a result of the Tenant's lack of cooperation with showing the rental unit.

The Landlord testified that he requested the Tenant to attend the rental unit for a move-out inspection for November 26, 2020 and November 30, 2020; however, the Tenant did not attend. The Landlord submitted two emails where each time he advised the Tenant to meet him for a move-out inspection the following day.

The Landlord submitted photos of the stove and bathroom that required cleaning.

The Landlord submitted a receipt for "cleaning washrooms tile wall, toilet, kitchen stove, painting washroom and kitchen wall and vacuume and mop unit floor." The Landlord is claiming damages in the amount of \$475.00.

When questioned, the Landlord stated that the walls in the washroom and kitchen were so dirty that they required repainting.

The Tenant submitted that, on November 1, 2020, she provided the Landlord written notice to end the tenancy on December 1, 2020. The Tenant stated that she took a picture of the written notice and sent it to the Landlord via email.

The Tenant testified that she emailed the Landlord on November 18, 2020 and advised him that she would be moving out of the rental unit on November 22, 2020.

The Tenant acknowledged that the Landlord provided some dates for move-out inspections; however, stated that the Landlord only emailed her the dates and gave her

only one day's notice which conflicted with her work schedule. The Tenant stated that she asked the Landlord to provide proper notice for the inspection dates and he failed to do so.

The Tenant submitted video and pictures to demonstrate that she cleaned the unit and also attended with an onsite building manager to walk through the unit on the day that the Tenant vacated.

### Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

Section 45(1) of the Act authorizes a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, the Tenant would have had to provide written notice to the Landlord on or before October 31, 2020 to end the tenancy on November 30, 2020. I find, based on the Tenant's testimony, that the Tenant served notice to end tenancy to the Landlord on November 1, 2020 and the effective date (move-out date), in accordance with section 45(1) of the Act, would be for December 31, 2020.

I accept the Tenant did not pay rent for the month of December 2020 and therefore, find that the Landlord has established a monetary claim for unpaid rent in the amount of \$1,200.00.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord claimed a loss as a result of having to clean the washroom and kitchen and paint the walls of each. The Landlord provided pictures of the rental unit that required cleaning but did not elaborate on the age or condition of the appliances or fixtures. I found that the pictures demonstrated that the areas and fixtures were older and showed substantial wear and tear, and likely not as easy to clean.

I accept the Tenant's evidence that she only lived in the rental unit for less than 1.5 years and did make an effort to clean the unit and inspect it with an assistant building manager on November 2020.

The Landlord testified that he sent emails to the Tenant to arrange move-out inspections; however, I find that the informal way of delivery and the short notice provided are not pursuant with section 88 of the Act. I find that if the Tenant had proper notice to attend a move-out inspection, the Tenant would have had an opportunity to discuss and possibly remedy the Landlord's concerns about the condition of the unit.

Based on these findings and the evidence from both parties, I find that the Landlord has failed to provide sufficient evidence that he suffered a loss (the cost of cleaning and painting) as a result of the Tenant's breach of the Act. As such, I dismiss this part of the Landlord's claim.

During the hearing, it became apparent to me that the Landlord expected the Tenant to abide by the Act; to provide exactly one month's notice to end the tenancy. However, after hearing both parties' testimony, it appears that the Landlord may not have abided by the Act when providing the Tenant notice to enter the rental unit or scheduling move-out condition inspections. I note this as I consider whether the Landlord should be compensated for the cost of the filing fee. Although, I find that the Landlord has been partially successful with their claim, I find that if the Landlord had provided thorough communications, notice and service to the Tenant throughout the tenancy, that this dispute process may not have been necessary. As such, I do not award the Landlord compensation for the cost of the filing fee.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,200.00 for unpaid rent. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit and pet damage deposit in the amount of \$1,200.00, in full satisfaction of the monetary claim.

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 7, 2021

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Residential Tenancy Branch