



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, MNRL, FFL

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on February 15, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for unpaid rent. Additionally, the landlord seeks to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 2, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

At the start of the hearing, the tenant confirmed they received the prepared evidence of the landlord. They also confirmed they did not prepare documents as evidence for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit, and/or unpaid rent amounts, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement between the parties, and neither party in the hearing disputed any terms therein. Both parties signed the agreement on March 1, 2019 for the start of the tenancy on that day. After the fixed one-year term the tenancy continued on a month-to-month basis. The monthly rent was \$2,000 per month, payable on the 1<sup>st</sup> of each month. At one point during the tenancy, the landlord and tenant agreed that a \$50/month reduction was appropriate for a proper apportionment of the costs for electricity.

There was no document provided that shows the landlord and tenant jointly reviewed the condition of the rental unit upon the tenant moving in. This tenancy started when the tenant moved from the lower unit to the upper unit at the same property.

The tenancy ended in September 2020. The landlord had served their own notice to the tenant for the landlord's use of that rental unit (the "Two-Month Notice"), seeking to end the tenancy for October 31. The landlord provides that the parties had the agreement for October being rent-free in line with this two-month notice to end the tenancy.

After this, the tenant did not pay rent for September 2020. The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent on September 7, setting a move-out date for September 17, 2020. On September 8 the tenant advised the landlord their final date in the rental unit would be September 20.

According to the landlord, a mover advised the landlord that the unit was then vacant on September 13. In response to this, the landlord advised the tenant that there must be a move-out inspection, completed jointly. They advised the tenant of the scheduled meeting to take place on September 18, 2020. In the hearing the tenant acknowledged receiving this notice from the landlord. The landlord alone entered the unit on the scheduled date and time, completing their inspection. This inspection is documented in the landlord's Condition Inspection Report, signed unilaterally on September 18, 2020. The report lists a missing mirror, and a missing freezer (which the landlord described as a "5 cubic foot freezer" they loaned to the tenant). Additionally, the landlord listed the bathroom door as broken.

In the hearing, the landlord explained the broken door as arising from a situation involving the police. The police were actually those who broke the door in order to enter the bathroom, and the tenant explained this to the landlord at the time. The tenant in the hearing reiterated this version of events.

The landlord provided a market value for a used item equivalent for the freezer and the mirror. The tenant explained they borrowed the freezer from the landlord and admitted to not returning it; they had no idea about the mirror in question.

The landlord provided a written statement in their evidence. This sets out that the tenant “was late with rent payments several times”. Intermittent missing amounts over the course of the tenancy add up to \$505 in total, which the landlord claims here. The landlord provided a document showing rent payments over the entire span of this tenancy, from March 2019 to September 2020.

In the hearing, the tenant acknowledged rent amounts outstanding. They provided that work through 2020 was challenging to them. They would agree to paying back amounts owing; however, they did not recall the exact amount owing.

Additionally, the landlord claims unpaid rent for the full month of August 2020 (\$1,950), and 17 days of September 2020 (\$1,105). The relevant timeline for these amounts owing, presented by the landlord, is as follows:

- August 2020: the tenant did not pay rent for this month
- August 28: the landlord issued the Two-Month Notice, effective October 31, 2020
- September 2020: the tenant did not pay rent
- September 7: the landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent, effective September 17, 2020
- September 8: the tenant advised the landlord in writing that they would vacate the rental unit on September 20, 2020.
- September 13: tenant removed most of their personal belongings
- September 18: tenant removed their final personal belongings
- September 20: tenant returned the key to the rental unit

In response to this in the hearing, the tenant provided that the agreement on one month rent-free was verbal. They had the understanding that the landlord aimed to assist the tenant. When they informed the landlord they would be vacating in September, they wanted to apply the one-month rent free in line with the Two-Month Notice for the rent amount in August. In a prior arbitration between these parties, the Arbitrator conceded

that the landlord by s. 51 of the *Act* should give the tenant one month rent free. The Arbitrator ruled that, in effect, this was the month of August which the tenant did not pay.

### Analysis

The *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord's claim for damages here relates primarily to the damage to the bathroom door that required its replacement. The landlord provided an image of the damaged door, and a reasonable estimate of its painting and replacement. I find the landlord has established that the damage exists; I also find the tenant breached s. 37 by not ensuring the door was repaired and/or replaced at the end of the tenancy. The events described leading to the door's damage occurred with the tenant present due to an extreme situation involving their roommate, and there is no evidence of any agreement between the parties here of a waiver of the need for repair or replacement of this damaged door. I so award the landlord the amount they claim for this damage: \$147.

The tenant conceded that they did not return the personal item of the landlord that was loaned to them previously. This was the freezer, for which the landlord provided a fair market value of \$50. I so award this \$50 claimed amount to the landlord.

I find the landlord has not established unequivocally that the dresser mirror is missing due to the actions of the tenant. The messages they provided dated August 18, 2019 do not establish that the item was on loan to the tenant, nor do they establish the existence of a mirror that since went missing. There is no award for this portion of the landlord's claim.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The tenant conceded that there were missed rent payments in the past. They explained their employment situation throughout the past year that was directly related to this. I find the landlord has established the accounting thereof with their evidence. I so award this amount of \$505 to the landlord for this portion of their claim.

As per the *Act* s. 51, a tenant is entitled to receive the equivalent of one month's rent payable under the tenancy agreement, on or before the effective date of the Two-Month Notice.

In a prior arbitration between these parties, an arbitrator dismissed the tenant's claim for one month's rent compensation, providing that they had in effect already received this amount by not paying the August 2020 rent.

In line with this, I find the tenant here is entitled to one month's rent payable under the tenancy agreement, this due to the landlord issuing the Two-Month Notice. Neither the subsequent 10-Day Notice nor the tenant advising of their move-out date negate their entitlement to this amount.

From the evidence, I find the tenant did not pay rent for August and September. While the Arbitrator in effect compensated the tenant this amount, they did so because it was a one-month rent amount for which the tenant was eligible under s. 51.

Moving on from this, I find the landlord established a claim for one month's rent still owing. I make the one-month rent compensation to the tenant for the unpaid September 2020 amount. This is the last month's rent, and my assignment of that entitlement to the last month's rent is in line with s. 51(1.1). I note it was the tenant's own choice to vacate before the effective date of the Two-Month Notice, this with overall short notice to the landlord and a staggered move-out process with no joint final inspection.

I so award the landlord the entirety of the \$1,950 August rent amount. The last month September 2020 rent amount – claimed by the landlord as \$1,105 – is the single-month

rent amount owed to the tenant under s. 51; therefore, I grant no award to the landlord for this amount.

As the landlord is successful in this Application for compensation, I find that the landlord is entitled to recover the \$100 filing fee.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,752 for damage and other monetary loss, and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: July 7, 2021

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Residential Tenancy Branch