



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MNDCL, FFL

### Introduction

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

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:08 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ('Application') and evidence on September 25, 2021 by way of registered mail. The landlord provided the tracking number during the hearing, which is on the cover page of this decision. In accordance with sections 88 and 89 of the *Act*, I find that the tenant deemed served with the landlord's application and

evidence on September 30, 2021, 5 days after service. The tenant did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2020, and was to end on September 30, 2021. Monthly rent was set at \$1,600.00, payable on the first of the month. The landlord had collected a security deposit of \$800.00, which the landlord testified that they had returned to the tenant under duress.

The landlord is seeking the following monetary claims as summarized on their monetary order worksheet.

<b>Item</b>	<b>Amount</b>
Chimney Cleaning	\$203.40
Unpaid utilities-Sept. 1-10, 2021	10.17
Rent owed for up to September 1-10, 2021	480.00
Personal Damages (\$1,000.00 in personal damages and \$1,600.00 rent landlord had to pay their landlord as they were unable to move in)	2,600.00
Unpaid Rent-August 2021	1,600.00
Electrical cords	94.06
Fan for wood stove	149.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$5,236.63</b>

The landlord testified that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on June 1, 2021 for an effective date of September 30, 2021. The landlord testified that they had purchased the home, and took possession of it on May 26, 2021. The landlord wanted to move in earlier, and both parties signed a Mutual Agreement on July 7, 2021 for the tenancy to end by 2:00 pm. on August 31, 2021. The landlord provided a copy of the Mutual Agreement in their evidentiary materials.

The landlord testified that despite the Mutual Agreement, the tenant did not move out by August 31, 2021. The landlord described a dispute started when the landlord wanted \$200.00 for cleaning, and the tenant refused to move out. The tenant finally vacated the home on September 10, 2021, which caused the landlord significant losses and distress as they expected to take possession on August 31, 2021. The landlord testified that the tenant had also forced them to return the security deposit to them.

The landlord is seeking a monetary order in the amount of \$1,000.00 in personal damages. The landlord provided a written statement stating that they had to file a police report as the landlord was threatened. The landlord testified that the tenant demanded \$200.00 for mouse removal and the return of their security deposit before agreeing to perform the move-out inspection. The landlord testified that despite the payment of the \$200.00, the tenant still refused to vacate the home on August 31, 2021. The landlord testified that the tenant finally moved out on September 10, 2021 after the landlord returned the \$800.00. The landlord testified that they also suffered a loss of \$500.00 as they were to pick up a puppy on August 31, 2021, but was unable to do so until the next day due to the issues with the tenant. The landlord testified that the puppy had an ear condition that was getting worse each day, and the landlord believed that they could have avoided the emergency veterinary clinic visit cost of over \$500.00 if they had been able to pick up the puppy on August 31, 2021.

The landlord also testified that they had to ask their landlord to allow them to stay an extra month as the tenant would not move out, and the landlord did not know how long the tenant would stay for. The landlord testified that this cost them \$1,600.00 in rent which they had to pay their landlord.

The landlord is also seeking a monetary order for unpaid rent for the months of August 2021, and the overholding for September 2021. The landlord is also seeking a monetary order for unpaid utilities.

The landlord testified that the tenant failed to clean the chimney, which invoice the landlord submitted for reimbursement for. Additionally, the landlord is seeking compensation for the electrical cords and fan for the wood stove.

### **Analysis**

Based on the undisputed testimony and evidence before me, I find that the tenant had agreed to move out by 2:00 p.m. on August 31, 2021, but failed to do so despite signing a Mutual Agreement. As the tenant failed to move out by that date and time, the landlord incurred additional expenses and suffered distress. I accept the landlord's testimony that they had to pay their landlord \$1,600.00 in rent as the landlord was unable to take possession of the home on August 31, 2021 as agreed to, and was uncertain as to when the tenant would vacate the property. Accordingly, I allow this portion of the landlord's monetary claim.

The landlord is also seeking personal damages in the amount of \$1,000.00 from the tenant. The landlord testified that the tenant had attempted to extort money from the landlord, which the landlord paid. The landlord testified that the incidents caused the landlord significant distress, and they complied as the tenant would not vacate the property.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the 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 established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred

Although I am sympathetic towards the landlord, and the significant stress this situation caused them, I am not satisfied that the landlord had satisfied all the above components for their claim, including the verification of the actual amount of loss, and that this loss stemmed directly from a violation of the tenancy agreement or contravention of the *Act*. Although the tenant may have refused to move out if the landlord did not return their security deposit or pay them \$200.00, the landlord had the option of declining these requests, and subsequently filing claims for losses associated with the tenant's actions. As stated above, the landlord has a duty to support the losses claimed, and also to mitigate or minimize the losses incurred. In this case, although the landlord was understandably placed in a situation where they felt pressured to comply with the tenant's requests, the landlord still had the option of to refuse these requests.

The landlord submits that they had to seek emergency veterinary treatment for their puppy, which was supposed to have been picked up on August 31, 2021. As noted by the landlord, the puppy already required medical treatment before this incident took place, and as the onus is on the landlord to support their losses, I am not satisfied that the landlord provided sufficient evidence to support any additional expenses incurred due to the delay in picking up the puppy. Accordingly, I dismiss the landlord's monetary claims for personal damages without leave to reapply.

**Section 26** of the *Act*, in part, states as follows:

### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that the tenant was to move out on August 31, 2021, but did not vacate until September 10, 2021. Although the tenant did sign a Mutual Agreement to move out on an earlier date than the effective date of September 30, 2021, I find that the tenant is still entitled to compensation equivalent to 1 month's rent pursuant to section 51 of the *Act* as stated below. As the landlord did not provide sufficient evidence to support that this compensation has been provided, I dismiss the landlord's monetary claim for August 2021 rent with leave to reapply. In the case where the landlord has provided this compensation to the tenant, the landlord may file a new application for recovery of the August 2021 rent. Liberty to reapply is not an extension of any applicable timelines. As the tenant failed to move out by August 31, 2021, in accordance with the Mutual Agreement, I allow the landlord's monetary claim for overholding in the amount of \$533.33 ( $\$1,600.00/30 \times 10$ )

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I will now consider the remainder of the landlord's claims. I find that the landlord provided detailed and undisputed testimony and evidence to support the losses claimed, as supported by invoices and photos submitted. As noted in Residential Tenancy Policy Guideline #1: "The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it." Accordingly, I allow the landlord a monetary order for these claims.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

### **Conclusion**

I issue a Monetary Order in the amount of \$2,689.96 in the landlord's favour as set out in the table below:

<b>Item</b>	<b>Amount</b>
Chimney Cleaning	\$203.40
Unpaid utilities-Sept. 1-10, 2021	10.17
Rent owed for up to September 1-10, 2021	533.33
Rent landlord had to pay their landlord as they were unable to move in	1,600.00
Electrical cords	94.06
Fan for wood stove	149.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,689.96</b>

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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.

I dismiss the remainder of the monetary claims without leave to reapply, with the exception of the August 2021 rent. If the landlord had previously compensated the tenant with 1 Month's rent pursuant to section 51 of the *Act*, the landlord may reapply. Liberty to reapply is not an extension of any applicable timelines.

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 23, 2022

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Residential Tenancy Branch