



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Tenant: MNETC, FFT  
Landlord: MNDL, FFL

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for compensation for damage or loss 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 requested:

- a monetary order for compensation for 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 attended the hearing with their legal counsel, SK, and interpreter, while the landlord was represented by their agent RN (“landlord”). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing packages ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other's Application and evidence.

**Issue(s) to be Decided**

Are the parties entitled to the monetary orders for which they have applied?

Are the parties entitled to recover the filing fee for their applications?

**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.

The tenant testified that this tenancy began on or about February 17, 2019, while the landlord believes that the tenancy had began approximately 5 years ago. Monthly rent was set at \$1,000.00, payable on the 15th day of the month. The landlord had collected a security deposit in the amount of \$500.00, which was returned to the tenant on March 1, 2022. The tenancy ended on March 1, 2022 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use. The tenant disputed the 2 Month Notice, and the Arbitrator granted the landlord an Order of Possession on February 17, 2022.

The tenant filed their application as the landlord did not compensate the tenant the equivalent of one month's rent. Both parties confirmed that the tenant was returned \$500.00 in rent for March 1, 2022 to March 15, 2022. The landlord testified that they were unclear as to what the tenant was owed as the tenant did not move out immediately after being served with the Order of Possession.

The landlord filed an application for a monetary order in the amount of \$1,500.00 for damage caused to the rental unit. The landlord testified that the tenant refused to vacate the rental unit after the landlord had served the tenant with the Order of Possession. The landlord testified that the tenant demanded that their security deposit be returned, and they had heard the tenant's son say that they were going to cause damage, followed by loud noises in the suite. The landlord submitted photos of the damage.

The tenant denies that they, or anyone they know, and caused the damage. The tenant submitted video footage of the rental unit, which the tenant testified was left in clean condition. The tenant argued that the landlord did not perform a move-in inspection, nor did the landlord provide any inspection reports. The tenant argued that the damage was due to wear and tear, and was present at the beginning of the tenancy.

### **Analysis**

Section 51 of the *Act* reads in part as follows:

#### **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) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence and testimony before me, I find that the landlord had only refunded the tenant half a month's rent. As noted above, section 51(1) of the *Act* requires that the landlord compensate the tenant the equivalent of one month's rent. The landlord does not have the right to deduct any money owed from the compensation payable. Accordingly, I order that the landlord pay to the tenant the remaining \$500.00 owed to the tenant.

As the tenant's application had merit, I allow the tenant to recover the filing fee paid for this application.

I will now consider the landlord's claim for damage.

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 landlord)* 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 (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

In this case, the landlord bears the burden of establishing their claims 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.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. In this case, the landlord testified that they were unable to perform a move-out inspection

due to the conflict that took place at the end of the tenancy. The landlord did not provide an explanation for why a move-in inspection report was not done, but testified they were certain that the tenant or their family member had caused the damage in the pictures.

The tenant denies causing the damage, citing wear and tear. The tenant also provided a video of the rental unit, which the tenant testified was taken at the end of the tenancy. In the absence of any move-in and move-out inspection reports, and in light of the disputed testimony, I have no way of ascertaining what the condition of the rental unit was when the tenant moved in, and what damage was actually caused during this tenancy. Although the landlord's agent claims to have heard the incident when the damage took place, as well as the tenant's son's exclamation that they were going to cause damage to the suite, I am not satisfied that this is sufficient evidence to prove that the tenant, or someone associated with the tenant, actually vandalized or caused damage to the suite.

Furthermore, the landlord did not provide any invoices or receipts to support the value of the loss claimed. As noted above, the party claiming the loss must support the value of the loss claimed. In this case, I find that the landlord failed to support that they suffered a loss in the amount of \$1,500.00 due to the tenant's contravention of the Act or tenancy agreement. Accordingly, I dismiss the landlord's claim for damages without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful with their claim, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for their application. The landlord must bear the cost of the filing fee.

### **Conclusion**

I find that the tenant is entitled to compensation in the amount of \$500.00, plus recovery of the filing fee. The tenant is provided with a Monetary Order in the amount of \$600.00. The landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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.

The landlord's entire application is dismissed 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: November 28, 2022

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Residential Tenancy Branch