



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that they received the Landlord’s application for dispute resolution, the notice of hearing and evidence. The Tenant confirms that they provided no evidence.

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

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### **Background and Evidence**

The following are agreed or undisputed facts: the tenancy under written agreement started July 1, 2021 on a fixed term to end June 30, 2022. Rent of \$2,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$1,050.00. The Landlord did not conduct a move-in

inspection with the Tenant. The Tenant failed to pay rent for October 2021 and the Landlord gave the Tenant a 10-day notice to end tenancy for unpaid rent. The Tenant moved out of the unit as required by the Notice. No move-out inspection report was offered or completed by the Landlord. The Landlord received the Tenant's forwarding address on April 9, 2022, after the Landlord's subservice application was dismissed with leave to reapply in a subservice decision dated March 31, 2022.

The Landlord states that the Tenant moved out October 10, 2021. The Tenant states that they moved out October 11, 2021.

The Landlord states that up to and including September 2021 the Tenant owes rental arrears of \$3,150.00. The Landlord states that they advertised the unit in October 2021 for a rental start date of November 2021 and at a monthly rental rate of \$2,500.00. The Landlord states that they lowered the monthly rate to \$2,200.00 for December 2021 and on December 30, 2021 signed a tenancy agreement with new tenants for monthly rent of \$2,000.00. The new tenancy started on February 1, 2022 as the earliest date the new tenants could start the tenancy. The Landlord claims \$21,000.00 in unpaid rent. The Landlord confirms that no rental accounting documents were provided for this claim. The Tenant states that up to and including September 2021 the Tenant owes rental arrears of \$1,100.00.

The Landlord states that the Tenant left the unit unclean and claims \$500.00 as the cleaning costs. The Landlord provides photos of the unit. Although the Landlord states that a cleaning receipt was provided none could be found in the evidence provided by the Landlord to the Residential Tenancy Branch. The Tenant states that no receipt was included in the Landlord's evidence received by the Tenant. The Tenant states that the unit was cleaned sufficiently for the next tenants to move in.

The Landlord states that the Tenant removed the furnishings and other household items that were provided with the unit. The Landlord provides a list of items missing at the

end of the tenancy in an evidence document containing a police email thread. The Landlord claims the costs of the amounts originally paid in 2019 for the missing items. The tenancy agreement does not contain a list of furnishings or other items in the unit at the onset of the tenancy.

The Tenant states that the Landlord had left some furniture in the unit and as the Tenant had their own the Tenant asked the Landlord to remove the furnishings. The Landlord told the Tenant to put the items in the garage, but the Tenant disagreed as the Tenant had their own use of the garage space under the tenancy agreement. The Tenant states that the Landlord agreed that the Tenant could sell all the items for \$1,000.00. The Tenant states that they did dispose of some of the items and left the rest at the unit. The Landlord does not dispute that the Tenant informed the Landlord of having their own furniture however the Landlord states that there was no agreement to sell the Landlord's furniture.

### Analysis

Section 37 of the Act provides 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Tenant's evidence that they left the unit sufficiently clean, given the Landlord's photos that do not provide evidence of unclean areas in the unit and as the Landlord did not provide any invoice for the costs of cleaning, I find on a balance of

probabilities that the Landlord has not sufficiently substantiated that the Tenant failed to leave the unit reasonably clean or that the Landlord incurred the costs claimed. I therefore dismiss the claim for cleaning costs.

The Landlord did not incur any costs to replace any furnishings or other household items. It is undisputed that the items were not new at the onset of the tenancy. The Landlord did not provide any estimates for the value of the used items for the costs being claimed. Whether or not the Tenant disposed of any items under agreement or otherwise, as there is no evidence upon which a determination of the value lost may be made, I find on a balance of probabilities that the Landlord has not sufficiently substantiated the costs or loss claimed. I therefore dismiss the claim for furnishings.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is payable until a tenancy ends. Section 41(1)(d) of the Act provides that a tenancy ends if the tenant vacates the rental unit. The Landlord provided no accounting evidence for the claimed unpaid rents to and including September 2021. Given the Tenant's evidence that rents of **\$1,100.00** were unpaid for this period I find on a balance of probabilities that the Landlord has substantiated this amount of unpaid rent. Given the Tenant's undisputed evidence of having vacated the unit on October 11, 2022 in accordance with the Landlord's notice to end tenancy for unpaid rent find and the undisputed evidence that no rent was paid for October 2022, I find on a balance of probabilities that the Landlord has substantiated rent to October 11, 2022 in the amount of **\$745.14** ( $2100/31=67.74$  per day x 11 days).

Although the Landlord advertised the unit in October 2021 given the Landlord's evidence that the unit was advertised for more than was being paid by the Tenant, I find that the Landlord failed to take any steps to reduce or mitigate the rental losses claimed. I therefore dismiss the Landlord's claims for all other rents.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,945.14**. Deducting the security deposit plus zero interest of **\$1,050.00** leaves **\$895.14** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,050.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$895.14**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 05, 2022

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Residential Tenancy Branch