



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNRL-S, MNDCL-S, MNDL-S, FFL

### **Introduction**

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

- a monetary order for compensation for unpaid utilities money owed, or monetary 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.

JS ("landlord") appeared as agent for the landlord in this hearing. 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

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application package ('Application'), which was emailed to the tenant. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application package. The tenant submitted evidence, which the tenant testified was submitted for this file as well as for another file that was heard on May 5, 2022 (the file number is noted on the cover page of this decision). After confirming with the landlord, the landlord confirmed that they were okay with the admittance of these materials, and proceeding with the scheduled hearing.

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

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

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 May 1, 2021, and continued on a month-to-month basis after December 31, 2021. Monthly rent was set at \$3,000.00, payable on the first of the month. The landlord still holds a security deposit of \$1,500.00 for this tenancy. The tenancy ended on March 31, 2022.

The landlord filed this application seeking the following monetary orders:

<b>Item</b>	<b>Amount</b>
Loss of Rent – April 2022	\$3,000.00
Replacement of unreturned FOB	50.00
Rekeying of main entrance door	200.00
Unpaid Utilities-June to October 2021	147.62
Recovery of Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$3,497.62</b>

The landlord testified that the tenant moved out without giving any notice. The landlord testified that they were able to re-rent the rental unit in August 2022, and are seeking loss of rental income for April 2022. The landlord is also seeking to recover the unpaid utilities for June to October 2021. The landlord provided a copy of the utility bills for that period.

The landlord testified in the hearing that they were missing a FOB that was not returned. The landlord testified that they had checked with the concierge. The landlord also believes that the tenant kept a copy of the keys as the tenant had left the keys on the table in the locked rental unit.

The tenant does not dispute that they had moved out on March 31, 2022 without giving proper notice. The tenant testified that they were frustrated with the landlord's refusal to address the repair requests made by the tenant. The tenant had filed an application for emergency repairs in relation to these requests on March 1, 2022, but the hearing was not set until May 5, 2022. The tenant did not attend that hearing, and the application was dismissed by the Arbitrator. The tenant testified in the hearing that the owner did

not live locally, and the landlord's agent informed that they were unable to deal with the issues.

The tenant does not dispute that they did not pay the utility bills from June 2021 to October 2021 as the bills were in the landlord's name, and the tenant was unsure about whether the amounts applied to the tenant's usage.

The tenant denies taking any keys or FOBs, and testified that everything was returned at the end of the tenancy. The tenant testified that the FOB was left with the concierge.

### **Analysis**

Section 44 of the *Act* states how a tenancy may be ended:

#### **How a tenancy ends**

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 [*tenant's notice*];
    - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
    - (ii) section 46 [*landlord's notice: non-payment of rent*];
    - (iii) section 47 [*landlord's notice: cause*];
    - (iv) section 48 [*landlord's notice: end of employment*];
    - (v) section 49 [*landlord's notice: landlord's use of property*];
    - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
    - (vii) section 50 [*tenant may end tenancy early*];
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c) the landlord and tenant agree in writing to end the tenancy;

- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

**Residential Tenancy Policy Guideline 34** states the following about a Frustrated Tenancy:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to*

*have been frustrated so long as the contract could still be fulfilled according to its terms.*

*A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.*

*The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.*

Although the tenant was forthright about why they ended the tenancy without proper notice, I find that the tenant did not end this tenancy in a manner that complies with the *Act*, as stated above. The parties did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. Although the tenant described outstanding repairs the tenant felt the landlord had ignored during this tenancy, I am not satisfied that this tenancy meets the definition of a Frustrated Tenancy under RTB Policy Guideline #34.

The evidence is clear that the tenant did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I, therefore, find that the tenant vacated the rental unit contrary to sections 44 and 45 of the *Act*.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for as is required by section 7(2) of the *Act*, and was able to re-rent the rental unit in August 2022. Despite the landlord's efforts, the landlord was unable to find a tenant for April 2022 due to the lack of proper notice. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$3,000.00 for the lost rental income for April 2022 due to the tenant's failure to give proper notice under the *Act*.

I will now consider the remaining claims. The landlord is seeking \$50.00 for a unreturned FOB, and \$200.00 for rekeying of the rental unit. 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 that 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 claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused the losses in the amounts claimed in this application.

I note the tenancy agreement states that the tenant was issued 1 fob and 1 garage fob. Despite the tenant's testimony that all fobs were returned to the concierge, the landlord's testimony was that one of the fobs were not recovered. The landlord also believes that the tenant had kept a copy of the keys to the rental unit. In light of the disputed evidence and testimony before me, I am not satisfied that the tenant kept possession of any fobs or keys when they had moved out. Furthermore, despite the fact that the landlord had filed a claim for \$50.00 and \$200.00, these losses were not supported in evidence, either by way of corresponding receipts or invoices. I note that the landlord had submitted an undated receipt for a locksmith for labor to "adjust strike plate" in the amount of \$126.00. I am not satisfied that this receipt submitted corresponds to either of the two claims.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

*6.6 The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.*

I find that the landlord failed to meet the standard of proof required to support their claims. As noted above, the burden is on the applicant to support not only the value of the loss, but that the loss claimed stemmed directly from the violation of the agreement or *Act* by the other party. In this case, I find the landlord's evidence falls short, and I therefore dismiss these two claims without leave to reapply.

The landlord also submitted a claim in the amount of \$147.62 for unpaid utility bills for the period of June 2021 to October 2021. I have reviewed the evidence before me, and

although the landlord did submit proof payments for bills that were paid through automatic payment for this period, pertaining to the rental address, the landlord did not submit copies of the detailed bills which show the period of consumption, as well as the consumption for each of these applicable periods. The tenant expressed concern in the hearing that the landlord did not support that these payments corresponded to the tenant's usage for this period. Although I am satisfied that the tenancy agreement clearly states that the tenant is responsible for the cost of these utilities, and although the landlord did submit proof of payment, I find the landlord failed to provide copies of the detailed billing for the amounts paid. As noted above, the landlord bears the onus of proof to support the amounts claimed. I therefore dismiss the landlord's claims for unpaid utilities with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

As the landlord's application has some merit, I allow the landlord to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards.

### **Conclusion**

I issue a \$1,600.00 Monetary Order to the landlord as set out in the table below:

<b>Item</b>	<b>Amount</b>
Loss of Rental Income	\$3,000.00
Recovery of Filing Fee	100.00
Less Security Deposit Held	-1,500.00
<b>Total Monetary Order</b>	<b>\$1,600.00</b>

The tenant must be served with this Order as soon as possible. Should the tenants 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 monetary claim for losses associated with the fob and keys are dismissed without leave to reapply.

The landlord's monetary claim for unpaid utilities is dismissed with 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: December 12, 2022

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Residential Tenancy Branch