



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, RR, OLC, FFT, MNRL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

### Preliminary issue #1

At the outset of the hearing, both parties advised that the tenancy had ended on September 30, 2022. Both parties further advised that at this point, each was seeking a monetary order, accordingly; all issues are dismissed without leave to reapply save and

except each party seeking a monetary award, award of the security deposit and the recovery of the filing fee. Both parties confirmed that each was seeking a monetary order as the tenancy has ended. The hearing proceeded on that basis.

Preliminary Issue # 2 Adjournment from January 3, 2023 to today's hearing

As part of the tenant's application, they sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The following RTB *Rules* are applicable and state (my emphasis added) regarding severing an application:

*2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

*6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

Both parties advised at the beginning of the hearing that the tenancy had ended and that each sought a monetary order. Although the parties were given a priority hearing date for an issue that no longer needed dispute resolution, they both advised they wanted to go ahead with their claims. The option to dismiss their claims with leave at the outset of the hearing or adjourn to another day where more time could be scheduled was open to me, however, I was happy to oblige and proceeded with the hearing.

The hearing on January 3, 2023 went beyond the 60 minutes allotted for the hearing and was adjourned after 75 minutes of hearing time to today's date. I did not raise the issue of severing the matter at the outset of the hearing as both parties seemed anxious to proceed. I only note this as the tenant became very irritated with me when I advised that we had run out of time and that the matter required an adjournment. The tenant

was displeased with the way I conducted the hearing and felt that if I had reviewed all of evidence an adjournment would not be needed. I advised both parties that I had reviewed each party's documentation prior to the hearing. I further explained that it was my practice to give each party a full opportunity to present their evidence, testimony, submissions, and arguments, and then review the documentation again after the hearing prior to issuing a decision.

The tenant was unhappy that I did not have instant recall of his documents and had not committed each page to memory. When I sought clarification or further explanation of any of his testimony, he became increasingly agitated with me and questioned the purpose of the hearing if I hadn't memorized all of his documentation prior. The tenant renewed his displeasure with the adjournment and felt he was waiting too long for this hearing.

I informed the tenant that he was provided with a priority hearing date, due to the urgent nature of their application to cancel the landlords' 10 Day's Notice to End Tenancy. I informed them that this was the central and most important, urgent issue to be dealt with at this hearing. I proceeded with both parties claims in an effort to assist them and to use the scheduled time efficiently. After 75 minutes in that hearing, there was insufficient time to deal with both party's application, as it is essentially two hearings in one, and the maximum time for hearings is 60 minutes.

Again, I only raise this issue to clarify and advise the parties that they have not suffered any delay or prejudice by this adjournment, and in reality, are having their matters heard **much sooner** than if they filed their applications for what they are, monetary claims.

#### Issue(s) to be Decided

Is either party entitled to a monetary award for loss or damages arising out of this tenancy?

Is either party entitled to the security deposit in partial satisfaction of the monetary award requested?

Is either party entitled to the recovery of the filing fee?

#### Background and Evidence

The parties agree to the following. The one-year fixed term tenancy began on July 1, 2022 but ended early on September 30, 2022. The monthly rent of \$2650.00 was due

on the first day of the month. The tenant paid a security deposit of \$2650.00 which the landlord still holds.

The tenant gave the following testimony. The tenant testified that the unit wasn't ready for move in on July 1, 2022 due to several deficiencies with the unit, most notably that it had not been properly cleaned. The tenant testified that he did not take occupy the unit until July 14, 2022. The tenant testified that when he did move in, the unit was still not sufficiently cleaned. The tenant testified that the unit was in a "disgusting condition". The tenant noted that the bathroom fan was especially dirty and had large clumps of dirt, dust, and debris in it.

The tenant testified that the washing machine gasket was covered in mold and required it to be replaced. The tenant testified that he spent his own personal time researching to find the parts and purchased it. The tenant testified that as he didn't have access to the in-suite laundry and incurred costs while he wasn't able to live in the suite. The tenant testified that when he did move in, the microwave was problematic, the blinds impeded access to the patio and furniture in the suite was dirty and covered in pet hair. The tenant testified that he had to spend another 2.5 hours cleaning it. The tenant also seeks compensation for the locks not being re-keyed prior to his move in and the hours he spent waiting for cleaners and repairmen.

The tenant is applying for the following:

1.	Loss of Use of the suite 12 days in July 2022	\$1,026.00
2.	Work to repair the bathroom exhaust fan 2 hours x \$80.00	160.00
3.	Washing Machine seal	260.00
4.	Research by tenant regarding Washing Machine part	40.00
5.	Washing Machine Cleaner	11.00
6.	Coin Laundry July 14-28(Loss of use of in suite laundry)	\$140.00
7.	Loss of Use of Living Room furniture July 14-28	60.00
8.	Loss of Use of Patio July 14-28	30.00
9.	Loss of Use built in kitchen appliances July 14-28	30.00
10.	Security Deposit overpayment	1,325.00
11.	2.5 Hours x 80.00 for suite cleaning	200.00
12.	No re-key on door lock – to be determined by Arbitrator	TBD
13.	10 Hours of waiting for repairs and cleaning for June 28 and June 29, 2022	TBD

The landlord gave the following testimony. The landlord testified that a move in condition inspection report was done with the tenant at move in. The landlord testified that the tenant refused to participate in the move out condition inspection report or sign off on the condition. The landlord testified that the tenant wanted a copy of the report immediately or he would not return the keys. The landlord testified that after much debate, she decided to take pictures of the report and gave the tenant the original so that she could get her keys.

The landlord testified that the tenant refused to pay the rent for August or September 2022 and seeks \$5300.00 in unpaid rent. The landlord also seeks the \$233.21 for cleaning the suite. The landlord testified that she felt that the tenant was being overly picky about the cleanliness and wants him to pay for it. The landlord is also seeking \$336.00 for the washing machine gasket. The landlord testified that she paid for the installation of that gasket but still has not seen that bill as the tenant arranged for and paid for the installation. The landlord also seeks the recovery of the \$100.00 filing fee for this application and \$12.00 for registered mail costs for a total claim of \$5981.21.

The landlord is applying for the following:

1.	Unpaid Rent for August- September 2022	\$5,300.00
2.	Suite Cleaning	233.21
3.	Washing Machine gasket installation	336.00
4.	Registered mail	12.00
5.	Filing Fee	100.00
6.		
	Total	<b>\$5,981.21</b>

### Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a

contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

*Rules and Burden of Proof*

I informed the parties, as each of them had filed an application, they each had the burden of proof, on a balance of probabilities, to present their submissions and evidence, and to prove their monetary claim, in order for me to make a decision regarding each party's application. Both parties confirmed understanding of same.

The following RTB *Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

I find that the tenant did not properly present his application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the tenant failed to properly review and explain his claim, amount, and evidence submitted in support of his application. The tenant submitted documents but did not review or explain them in sufficient detail during this hearing. I had to repeatedly ask the tenant specific questions about the above information, during this hearing.

This hearing lasted 105 minutes, so the tenant had ample opportunity to present his application and respond to the landlord's evidence. As noted earlier, the tenant became irritated with me when I asked him questions about his claim. The tenant stated numerous times that the "significant evidence submitted" would prove his claim. I note

that the evidence was significant in volume, but very limited in evidentiary weight and relevance and deficient for almost all his claims. Many of the documents submitted by the tenant were duplicated and the typed statements submitted by the tenant were without sufficient corroborating evidence.

I address the tenants claims and my findings as follows.

*Loss of Use of Suite*

The landlord originally disputed this amount, but later agreed that the unit had not been in a move in ready condition for the tenant, accordingly; I find that the tenant is entitled to \$1026.00.

*Bathroom Fan*

The tenant has failed to provide sufficient corroborating evidence to support the amount sought, specifically, how he calculated his loss, accordingly; I dismiss this portion of his application.

*Washing Machine Seal, Research, Cleaner, Coin Laundry*

The tenant has not provided sufficient documentation or receipts or actual costs to support this claim and I therefore dismiss this portion of his application.

*Loss of Use Living Room, Patio, Appliances*

The tenant has failed to provide sufficient evidence of negligence or recklessness as well a lack of evidence to support the calculations of the amount sought, accordingly; I dismiss this portion of his application.

*Security Deposit overpayment*

The landlord provided documentation that this issue was resolved, accordingly; I dismiss this portion of the tenants claim.

Suite cleaning

The tenant has not provided sufficient evidence of the loss incurred, costs incurred or negligence or recklessness on behalf of the landlord, accordingly; I dismiss this portion of the tenants application.

No Rekeying on door lock, loss of security

The tenant has not been able to illustrate any loss and therefore I dismiss this portion of the tenant's application.

10 hours of Waiting for Repairs and Cleaning

The tenant is the applicant and must provide a calculation as to the loss they allege, as the tenant has not done that, I find that they have not met the criteria outlined above to satisfy the four grounds as noted and dismiss this portion of the tenants application.

I now address the landlords claim and my findings as follows.

Unpaid rent

As I have noted above, I find that the tenant was entitled to \$1026.00 as compensation for the portion of July that the unit was ready for him to occupy even though he paid the full months rent. The tenant's submission that he felt justified in withholding the rent for July and August was ill advised and incorrect. Section 26 of the Act addresses this issue 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.

The tenant cannot unilaterally decide whether the landlord is entitled to it or not, that is an issue for an Arbitrator to decide. Based on the above I find that the landlord is entitled to the two months of rent of \$5300.00.



Cleaning

The tenant provided sufficient evidence to show that the unit was not provided to him in a reasonably clean manner, accordingly I dismiss the landlords claim to recover the \$233.21 she paid to have the unit cleaned at the beginning of the tenancy.

Washing Machine Gasket

In an email from July 20, 2022, the landlord advised the tenant that she would pay for this item; accordingly, I dismiss this portion of the landlords claim.

Registered Mail Fees

Section 72 of the Act states that the only hearing related costs that are recoverable for a hearing is the filing fee, accordingly, I dismiss this portion of the landlords application.

As neither party was fully successful in their application, I decline to award the recovery of the filing fee to either party and they must each bear that cost.

The tenant is entitled to \$1026.00. The landlord is entitled to \$5300.00. Using the offsetting provision under section 72 of the Act, I apply the tenants monetary award against the landlords for an amount owing to the landlord of \$4274.00.

Conclusion

The landlord has established a claim for \$4274.00. I order that the landlord retain the \$2650.00 deposit and the accrued interest of \$18.12 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1605.88. 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 *Residential Tenancy Act*.

Dated: May 18, 2023

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Residential Tenancy Branch