



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding FORTH GEN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-S, FF

### Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord's agent and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The tenant confirmed receipt of the landlord's application and evidence. The tenant said they did not serve their evidence to the landlord. As each party is required to serve the other party and the Residential Tenancy Branch (RTB) with their evidence, I decline to consider the tenant's documentary evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant, accepted documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to the relief sought as noted above and recovery of the cost of the filing fee?

Background and Evidence

The evidence at the hearing was that the tenancy began on May 1, 2022 and ended by August 31, 2022. The monthly rent was \$2000, and the tenant paid a security deposit of \$1000.

The written tenancy agreement showed a fixed-term through April 30, 2023. The tenancy agreement also showed the tenant would pay the landlord liquidated damages of \$850 in the event the tenant ended the tenancy earlier than the fixed-term.

The move-out condition inspection report (Report) showed the tenant agreed that the landlord could deduct \$850 from their security deposit for the liquidated damages.

For this reason, the landlord continues to hold \$150 from the tenant's security deposit.

The landlord's monetary claim is \$2,171.44, comprised of \$2000 for unpaid rent for September 2022, \$150 for the security deposit, and \$21.44 for utilities charges.

To describe their monetary claim, the landlord wrote the following in their application:

*Tenant's notice to end tenancy agreement submitted on August 11, 2022 was late for August 31, 2022. We were unable to re rent the suite for August 31, 2022 and tenant is responsible for September rent (\$2,000.00) which is now due and payable. The tenant breached a material term of the agreement by moving out before the end of the fixed term. The tenant was notified that as part of our agreement they would be responsible for liquidated damages (\$850.00) which would be deducted from their deposit*

The agent testified to the following:

- The landlord received the tenant's notice to vacate on August 11, 2022.

- When they received the tenant's notice, they communicated with the tenant advising them of their obligations under the written tenancy agreement.
- They told the tenant they would do their best to re-rent the unit, but did not find a new tenant until October 1, 2023.
- The landlord began advertising the rental unit when they received the tenant's notice, as well as posting signs on the residential property.
- The rental unit was advertised for a monthly rent of \$2950.
- The tenant was responsible for utilities until the end of September, and the hydro charges through September 30 was paid by the landlord.

The landlord's relevant evidence also included a hydro statement.

The tenant testified to the following:

- The tenant's wife had a change in job location, and they were required to move out-of-province.
- They communicated with the landlord's agent at the time, beginning in July and the agent said not to worry about owing rent, as they thought they would have a new tenant by the time the tenant vacated.
- On August 6, 2022, they met with the landlord's agent at the time, and were asked to sign the written notice in order to be able to advertise, and again were informed not to worry about it.
- They knew people who were interested in the rental unit for \$2000, but they could not afford the rent being asked.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 45(2) of the Act requires the tenant to give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

There is no dispute that the tenant breached the terms of their written tenancy agreement by ending the tenancy before April 30, 2023. I find the tenant is liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord's obligation to minimize their loss.

Tenancy Policy Guideline 3 applies and states, in relevant part, the following:

*In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.*

In this case, the landlord confirmed advertising the rental unit for rent at the rate of \$2950 per month. I find this constitutes a greatly increased rent, as this is a 47.5% increase in rent from what the tenant was paying. The monthly rent for the tenant was established at \$2000 beginning May 1, 2022, which means that the tenancy continued only 4 months.

For this reason, I find the landlord submitted insufficient evidence that they did whatever was reasonable to minimize their loss. I **dismiss** the landlord's claim for \$2000 for unpaid rent for September 2022, **without leave to reapply**.

As to the landlord's claim for unpaid utility charges, I do not accept that the tenant owed utilities after the tenancy ended on August 31, 2022, unless there had been charges for usage prior to that date.

In this case, the landlord's evidence showed the usage was incurred in September 2022, and in addition, I do not find the BC Hydro statement matched the claim amount. For these reasons, I **dismiss** the landlord's claim of \$21.44, **without leave to reapply**.

As to the landlord's claim for \$150, I find this amount should not have been listed in the total monetary claim, as this amount is the remaining security deposit held after deduction of the liquidated damages of \$850, to which the tenant agreed. For this reason, I **dismiss** the landlord's claim for \$150, **without leave to reapply**.

As I have dismissed the landlord's monetary claim, I dismiss their request to recover the filing fee, without leave to reapply.

As the landlord holds a balance of \$150 from the tenant's security deposit, I order the landlord to return the \$150 remaining security deposit immediately. To give effect to this order, the tenant is granted a monetary order in the amount of \$150.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

### Conclusion

For the reasons stated above, the landlord's monetary claim is dismissed, without leave to reapply.

The landlord is ordered to return the balance of tenant's security deposit of \$150, and the tenant is granted a monetary order for \$150.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 14, 2023

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Residential Tenancy Branch