



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL MNDL MNRL FFL

### Introduction

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

- a monetary order for unpaid rent and compensation for damages pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:19 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. Landlord A.D. attended the hearing on behalf of the landlords and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding package for this hearing.

The landlord testified that the tenants had vacated the rental unit without providing a forwarding address. However, the landlord stated that the tenants had provided the landlord with tenant C.H.'s mother's address, at the beginning of the tenancy. To the landlord's knowledge, the address was a permanent address for the tenants for mail service. As such, the landlord testified that he sent the tenants individually addressed

packages containing the Notice of Dispute Resolution for this hearing and the landlord's evidentiary materials via Canada Post registered mail on June 25, 2018.

As proof of this service, the landlord submitted into evidence a Canada Post registered mail receipt with two tracking numbers (noted on the cover sheet of this decision). During the hearing, with the agreement of the landlord, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was delivered. As such, I find that the tenants were served with the notice of this hearing in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

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 and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord testified that there was no written tenancy agreement, only a verbal tenancy agreement. The landlord testified to the following information pertaining to the tenancy:

- This month-to-month tenancy began on November 1, 2017.
- Monthly rent of \$850.00 was payable on the first of the month.
- The tenants paid a security deposit of \$425.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that he had previously issued the tenants with a notice to end tenancy for unpaid rent and filed an Application of Dispute Resolution seeking an Order of Possession and a Monetary Order for unpaid rent. The landlord provided the file number for the previous Decision, which I have noted on the cover sheet of this Decision. By the time of the arbitration hearing, the tenants had already moved out of the rental unit. The landlord's application was dismissed with leave to reapply, due to an issue with service. Therefore, the landlord has now re-applied seeking a Monetary Order for damages and unpaid rent.

As the tenants did not attend the hearing, the landlord provided the following unchallenged testimony:

- The tenants failed to pay partial rent for February (\$350.00) and did not pay any rent for March 2018 of (\$850.00).
- The tenants left holes in the walls, broke doors, broke a window, defaced the refrigerator, left behind garbage and belongings that had to be removed, damaged the carpets as a result of droppings from their pet rats and a decomposing pet snake, and left the rental unit requiring significant cleaning.

The landlord submitted photographic evidence of the above-noted damages in support of his testimony. The landlord also submitted a Monetary Order Worksheet setting out the costs incurred for the damages totalling \$15,949.64, however, the landlord only submitted receipts for the following claims:

Item	Amount
Refrigerator replacement	\$250.00
Paint supplies	\$72.37
Cleaning supplies	\$17.47
Wall repair supplies	\$25.59

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for rental arrears and damages. I have addressed my findings on each of these heads of claim.

1) Rental Arrears

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's unchallenged testimony that the agreed upon terms of the verbal tenancy required the tenants to pay \$850.00 in monthly rent. As such, based on the testimony and evidence before me, on a balance of probabilities, I accept the sworn testimony of the landlord that the tenants failed to pay partial rent of \$350.00 for the month of February and \$850.00 for the full month of March 2018.

Therefore, I find the landlord is entitled to a monetary award of \$1,200.00 for rental arrears owed by the tenants.

2) Damages

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

I accept the unchallenged sworn testimony of the landlord, supported by the documentary evidence submitted, that the tenants vacated the rental unit leaving behind garbage and belongings that needed to be disposed of by the landlord, as well as damages requiring repair and extensive cleaning. However, the landlord failed to provide all his receipts to establish "the actual monetary amount or value of the damage or loss" as required in a claim for compensation. Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that landlord is entitled to a monetary award of \$365.43 for the damages claimed for which he has submitted receipts establishing "the actual monetary amount or value" as set out below:

Item	Amount
Refrigerator replacement	\$250.00

Paint supplies	\$72.37
Cleaning supplies	\$17.47
Wall repair supplies	\$25.59
<b>Total monetary award for damages</b>	<b>\$365.43</b>

Having been successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Therefore, I find the landlord entitled to a monetary award of **\$1,665.43** in full satisfaction of the rental arrears and damages, and recovery of the filing fee for this application.

### **Security Deposit and Set-Off of Monetary Award**

The landlord confirmed that he continued to hold the tenants' security deposit in the amount of \$425.00.

In accordance with the offsetting provisions of section 72 of the *Act*, the amount of the security deposit retained by the landlord will be set-off against the amount of the monetary award in favour of the landlord to be paid by the tenants.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing of \$1,240.43. The breakdown is as follows:

<b>Item</b>	<b>Amount</b>
Monetary award to landlord for compensation (unpaid rent; damages; recovery of the filing fee)	\$1,665.43
<b>LESS:</b> Security deposit retained by the landlord	(\$425.00)
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$1,240.43</b>

### Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$1,240.43 pursuant to sections 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and the tenants 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.

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, 2018

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Residential Tenancy Branch