



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent and utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenant on June 24, 2016. The landlords have provided a certificate of service for these documents which shows the service of documents was done in front of a witness.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security and pet deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlords testified that this month to month tenancy started on November 29, 2015. Rent for this unit was \$1,575.00 per month due on the first of each month. The tenant paid a security deposit of \$787.50 on November 26, 2015 and a pet deposit of \$393.50 on December 15, 2015. The tenancy ended on June 06, 2016. A copy of the tenancy agreement has been provided in documentary evidence.

The landlords testified that on the tenancy agreement two tenants were named. The other tenant vacated the unit in 2015 and the tenancy continued with this tenant as a sole tenant.

The landlords testified that the tenant failed to pay utilities of \$1,748.57. The landlords referred to the final bill provided by the city and testified that this amount has now been added to the landlords' electricity account with the city and will be added to the landlords' taxes if it remains unpaid. The city informed the landlords that it is their responsibility to recover this amount from the tenant.

The landlords testified that they had applied for a Direct Request Proceeding and from this the landlord obtained an Order of Possession for unpaid rent for May, 2016. The landlords were given leave to reapply for the unpaid utilities. The landlords served the Order of Possession upon the tenant on May 30, 2016 and the tenant should have vacated the rental unit on June 02, 2016. The tenant did not vacate and the landlords had to enforce the Order of Possession in Supreme Court. The Court issued a Writ of

Possession and the bailiffs came and removed the tenant and his belongings on June 06, 2016. The landlords seek to recover unpaid rent from June 01 to June 06, 2016 of \$393.75.

The landlords testified that as they had to pay the bailiffs the sum of \$2,500.00 the landlords also seek to recover this cost from the tenant.

The landlords testified that the tenant did attend the move in condition inspection but despite two opportunities being provided to the tenant on a final opportunity for inspection notice the tenant failed to attend the move out inspection and this was done in the tenant's absence. The landlords referred to the details shown on the move out inspection report. This report shows the unit was left in a dirty condition and that there was damage to areas of the unit. Further to this the tenant's belongings were taken out of the unit to the kerb by the bailiffs; the tenant did not want to take anything and as these items had very little monetary value the landlords had to have everything removed. The landlords seek to recover the following amounts:

The landlords seek to recover \$400.00 for the removal of the tenant's belongings;

The tenant failed to return the keys to the unit and the locks had to be rekeyed. The landlords seek to recover \$89.25 for this work;

The unit was left in a dirty condition. The landlords engaged cleaners to clean the unit. This work took 20 hours at \$20.00 an hour. The landlords seek to recover \$400.00.

The tenant caused damage in the unit to the master bedroom door and the wash room door. Holes had been punched in both doors. The doors had to be repaired at a cost of \$100.00 each; the dining area had a hole punched in the wall. This wall had to be repaired at a cost of \$200.00; the mirrored closet door in the master bedroom had been shattered. This had to be replaced at a cost of \$520.00; the front door screen glass was shattered. This was replaced at a cost of \$200.00; the wood stove seal was torn. This

was replaced at a cost of \$20.00. The landlords seek to recover \$1,140.00 for the damages.

The landlords seek an Order to be permitted to keep the security and pet deposits. The landlord referred to the tenant's written permission for the landlords to keep the damage and pet deposit to offset against unpaid rent and damages.

The landlords also seek to recover their filing fee of \$100.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords' undisputed evidence before me.

With regard to the landlords' claim for unpaid rent; I am satisfied from the evidence before me that the tenant was evicted from the unit by the bailiffs on June 06, 2016. I am also satisfied that the tenant did not pay rent for June, 2016. I find therefore the landlords have established a claim to recover the amount of **\$393.75** from the tenant.

With regard to the landlords' claim for unpaid utilities; the landlords have provided the final utility bill from the city. Although this bill was in the tenants' name and therefore the tenants' responsibility; if the bill remains unpaid by the tenant then this charge is passed on to the landlords and will be added to their city taxes in 2017. Consequently, I am satisfied from the evidence before me that there remains an amount of **\$1,748.57** in unpaid utilities and therefore the landlords have established a claim to recover this amount from the tenant.

With regard to the landlords' claim to recover the costs incurred for bailiffs to evict the tenant. When the tenant is served an Order of Possession which has been legally obtained through the Residential Tenancy Branch at a Direct Request Proceeding then

the tenant should have vacated the rental unit two days after this Order was served upon him. As the tenant failed to do so, the landlords had to enforce the Order of Possession in the Supreme Court and any costs incurred to the landlords to enforce this Order may be recovered by the landlords. Consequently, I am satisfied the landlords incurred a cost of **\$2,500.00** for the bailiffs to come out to evict the tenant and therefore this amount may be recovered from the tenant.

With regard to the landlords' claim for damage to the unit, to remove the tenants belongings and to clean the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I am satisfied that the tenant caused damage to the doors, the wall, the mirrored closet door, the front door glass and the seal on the wood stove. Furthermore I am also satisfied that the tenant did not remove his belongings from the kerb which left the landlords with this task. The tenant did not return the keys to the

rental unit as he is required to do at the end of a tenancy and the unit was left in a dirty condition which required substantial cleaning. I therefore find the landlords have established a claim to recover the amount of **\$1,140.00** for damage, **\$400.00** for the removal of the tenant's belongings; **\$89.25** to have the locks rekeyed; and **\$400.00** for cleaning from the tenant.

With regard to the landlords claim for an Order permitting the landlords to keep the security and pet deposit; when a tenant has given the landlord written permission to keep the security and pet deposit then the landlord may do so without applying for an Order to permit them to do so. I am satisfied that the tenant did agree in writing that the landlords could retain the security deposit of \$787.75 and the pet deposit of \$393.50 therefore no Orders are necessary. I have therefore deducted the amount of **\$1,181.25** from the landlords' monetary award.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Unpaid rent for June	\$393.75
Unpaid utilities	\$1,748.57
Bailiff fees	\$2,500.00
Removal of tenant's belongings	\$400.00
Rekeying locks	\$89.25
Cleaning	\$400.00
Repair to damage	\$1,140.00
<b>Subtotal</b>	<b>\$6,671.57</b>
Filing fee	\$100.00
Less security and pet deposits	(-\$1,181.25)
<b>Total amount due to the landlord</b>	<b>\$5,590.32</b>

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,590.32**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 20, 2016

---

Residential Tenancy Branch