



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Multiple Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MNR, MND, MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and damage to the rental unit, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

I note there is a claim for loss of rent revenue only; not unpaid rent.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy commenced on November 1, 2015. Rent was \$2,300.00 due on the first day of each month. The landlord is holding security deposit in the sum of \$1,150.00. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed.

The landlord has made the claim for compensation:

|                                   |                   |
|-----------------------------------|-------------------|
| July 2016 rent pro-rated          | 1,632.26          |
| Parking pass                      | 100.00            |
| Garburator                        | 451.50            |
| Cleaning                          | 203.44            |
| Bylaw fines                       | 50.00             |
| Filing fee for writ of possession | 120.00            |
| Bailiff fee                       | 1,356.95          |
| <b>TOTAL</b>                      | <b>\$3,914.15</b> |

There was no dispute that the tenancy ended as the result of an order of possession issued on June 22, 2016. The tenant was removed from the rental unit by a bailiff service on July 29, 2016. The landlord has claimed the cost of obtaining a writ of possession in the sum of \$120.00. The landlord has claimed the bailiff service costs and supplied an invoice as evidence.

The landlord did not schedule a move-out condition inspection report as the tenant was moved out by the bailiff.

The landlord has calculated a per diem rate for rent owed and has claimed unpaid per diem rent from July 1 to 29, 2016, inclusive. The tenant confirmed that the tenancy ended as the result of the order of possession and that no rent was paid in July.

The tenant agreed to the bylaw fine cost claimed by the landlord.

The landlord said the tenant returned only one of two parking passes. The landlord recently replaced the missing pass at the cost of a \$100.00 fee imposed by the strata council.

The tenant said the landlords' agent refused to accept the parking pass from the tenant. The tenant did not explain how the parking pass was offered to the landlord.

After the tenant vacated the landlord discovered that the two year old garburator was not working. The landlord submitted a July 26, 2016 invoice for the cost of installing a new garburator. The landlord assumes the tenant caused the garburator to cease working. The invoice does not set out the reason the garburator stopped working.

The tenant said the garburator was working when he vacated.

The unit was not cleaned when the tenant vacated. The landlord supplied an invoice for 7.75 hours of cleaning that took place on July 25, 2016.

The tenant said he was not allowed to remain in the rental unit to clean once the bailiff had removed his personal property. The tenant said the unit was not in terrible condition.

### Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

Residential Tenancy Branch (RTB)\_policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the landlord is entitled to compensation in the sums claimed for obtaining and enforcing the writ of possession. The tenant did not vacate as required after an order of possession had been served. The landlord was required to obtain a writ of possession and to then enforce that order by hiring a bailiff service to move the tenants' property out of the rental unit.

As the tenant occupied the rental unit beyond the effective date of the notice ending tenancy, the tenant was responsible for payment of per diem rent for each day he occupied the unit beyond the effective date. The tenant confirmed that no rent was paid between July 1 and 20, 2016. Therefore, I find that the landlord is entitled to compensation as claimed for per diem rent from July 1 to 29, 2017.

The tenant has confirmed the parking pass was not returned to the landlord. There was no evidence before me that the tenant had been barred from returning the pass to the landlord. The tenant could have left the pass at the rental unit or returned the pass via mail, but he did not. Therefore, I find the landlord is entitled to compensation for the cost of a new parking pass.

There was no evidence before me to support the landlords' assumption that the tenant had damaged the garburator. The invoice did not provide any explanation for the failure of the garburator. I cannot accept a claim for costs that is based on an assumption. Therefore, in the absence of any evidence that the tenant caused damage to the garburator I find that this claim is dismissed.

The tenant has confirmed that he did not clean the rental unit. Even though a bailiff service moved the tenant out of the unit the tenant was required to ensure that the unit was left in a reasonably clean state. Therefore, I find that the landlord is entitled to the cost claimed for cleaning.

The tenant has agreed to the bylaw fine costs.

Therefore, the landlord is entitled to the following compensation:

|                          | Claimed  | Accepted |
|--------------------------|----------|----------|
| July 2016 rent pro-rated | 1,632.26 | 1,632.26 |
| Parking pass             | 100.00   | 100.00   |
| Garburator               | 451.50   | 0        |
| Cleaning                 | 203.44   | 203.44   |

|                                   |                   |                   |
|-----------------------------------|-------------------|-------------------|
| Bylaw fines                       | 50.00             | 50.00             |
| Filing fee for writ of possession | 120.00            | 120.00            |
| Bailiff fee                       | 1,356.95          | 1356.95           |
| <b>TOTAL</b>                      | <b>\$3,914.15</b> | <b>\$3,462.65</b> |

The balance of the claim is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,150.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order for the balance of \$2,412.65. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

#### Conclusion

The landlord is entitled to compensation as set out above.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the tenant's security deposit in partial satisfaction of the claim.

This decision is final and binding and 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*.

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Dated: February 07, 2017

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Residential Tenancy Branch