



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: MND MNDC FF  
Tenant: MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was received at the Residential Tenancy Branch on May 15, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application was dated April 27, 2017 (the Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and was accompanied by his spouse, S.C., who did not participate in the hearing. The Tenant attended the hearing on his own behalf. Both the Landlord and the Tenant provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Landlord’s Application package was served on the Tenant by registered mail on May 15, 2017. A Canada Post registered mail receipt was submitted in support. The Tenant acknowledged receipt.

The Tenant submitted that the Tenant's Application package and a subsequent documentary evidence package were served on the Landlord by registered mail on April 27 and July 20, 2017, respectively. The Landlord acknowledged receipt of both.

Neither party raised any issues with respect to service or receipt of the above documents and evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

Neither party submitted a written tenancy agreement into evidence. However, they agreed the tenancy began on November 1, 2010, and ended when the Tenant vacated the rental unit on April 4, 2017. The tenancy ended when the Landlord issued a notice to end tenancy for landlord's use of property, which was received by the Tenant on February 1, 2017. During the tenancy, rent in the amount of \$2,100.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,050.00, which the Landlord holds.

### The Landlord's Claim

The Landlord's claim was summarized on a Monetary Order Worksheet, dated May 15, 2017. First, the Landlord claimed \$4,200.00 for lost rent for two months because of repairs needed in the rental unit at the end of the tenancy. Specifically, the Landlord testified that it was not easy to re-rent the unit because of damage to the hardwood floors.

In support of this aspect of the claim, the Landlord submitted two photographs of damage to the hardwood floors showing minor damage in one area. The Landlord also submitted a Work Order, dated May 11, 2017, which provided an estimate of the cost of labour and materials to replace the flooring. The Landlord testified that someone came to look at the flooring and told

him that particular kind of flooring is not available so the entire floor would have to be replaced. The Landlord acknowledged the work has not been done.

In reply, the Tenant testified the move-out condition inspection was attended by his agent, J., and the Landlord's spouse, S.C. The Tenant testified that the condition inspection report did not refer to any floor damage. The Landlord agreed and testified that the Tenant's agent pressured S.C. to complete the report and that the damage to the floors was not recorded. The Tenant acknowledged the damage was caused during the tenancy when a wet cloth was left on the floor. However, he suggested the floors are likely 15 years old and show a lot of wear and tear. He also submitted that only a few boards need to be replaced.

Second, the Landlord claimed \$2,175.30 to replace hardwood flooring in the rental unit due to damage and for lost rent. This amount was determined using the following calculation:

<b>Item</b>	<b>Amount</b>
Work order:	\$2,945.30
PLUS lost rent (4 days):	\$280.00
LESS security deposit:	(\$1,050.00)
<b>TOTAL:</b>	<b>\$2,175.30</b>

For the reasons referred to above, the Tenant disputed the amount claimed to repair the flooring. Again, he indicated the damage was minor. However, the Tenant did agree the Landlord was entitled to \$280.00 for rent for four days in April 2017.

#### The Tenant's Claim

The Tenant's claim was summarized in the Tenant's Application. First, he claimed the Landlord did not take steps to do what he said he was going to do with the rental unit pursuant to a notice to end tenancy for landlord's use of property. He stated he received the notice to end tenancy for landlord's use of property on February 1, 2017. The Landlord agreed. The stated reason for ending the tenancy was that the Landlord's son intended to move in. However, the son did not move in because he obtained a new job. As a result, the Landlord listed the rental unit on Craigslist on April 5, 2017. A copy of the Craigslist advertisement was included with the Tenant's documentary evidence. The amount of rent sought by the Landlord was \$3,100.00 per month.

In reply, the Landlord agreed with the Tenant's testimony but suggested that it was out of his control. He did not know his son would accept another job and not move into the rental unit.

Second, the Tenant claimed \$2,100.00, which represented the return of double the amount of the security deposit. He testified the Landlord issued a notice to end tenancy for landlord's use of property, which was received on February 1, 2017. However, the Tenant gave notice to the

Landlord, in accordance with the *Act*, advising that he intended to vacate the rental unit on April 4, 2017. However, the Landlord has not returned any portion of the security deposit to him.

In reply, the Landlord acknowledged the security deposit has not been returned to the Tenant.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

### The Landlord's Claim

With respect to the Landlord's claim for \$4,200.00 for lost rent, I find there is insufficient evidence before me to conclude the Landlord is entitled to this amount. The evidence submitted by the Landlord consisted of two photographs of the hardwood floors and a Work Order that provided an estimated cost to replace the flooring. However, the work has not been completed. Although the Landlord testified he was unable to re-rent the unit in a timely manner, I find it is just as likely that the increased rent sought in the Craigslist advertisement – \$1,000.00 more than what was being paid by the Tenant – may also have limited the potential tenant pool. In addition, the Landlord did not provide documentary evidence to confirm the condition of the flooring in the rental unit at the beginning of the tenancy. Indeed, the parties both confirmed

that the condition inspection report, completed by J. and S.C., did not make any reference to the floor damage. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$2,175.30 for labour and materials to replace hardwood flooring in the rental unit and for lost rent, the Tenant conceded the damage to the flooring was caused during the tenancy. However, the parties agreed the flooring was likely as many as 15 years old, that the damage was minor, and that the damage was not reflected on the condition inspection report. In light of the Tenant's agreement, I find a more reasonable amount to repair the damaged flooring to be \$750.00. Further, I grant the Landlord \$280.00 for lost rent, as agreed to by the Tenant. Accordingly, I find the Landlord is entitled to a total monetary award of \$1,030.00

### The Tenant's Claim

With respect to the Tenant's claim for \$4,200.00, the Tenant testified that the Landlord issued a notice to end tenancy for landlord's use of property on the basis that the landlord or a close family intended to occupy the rental unit. However, the Tenant asserted, and the Landlord conceded, that the Landlord's son did not move into the rental unit within a reasonable period or at all. The Landlord suggested this was beyond his control. Section 51(2) of the *Act* states:

*In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

[Reproduced as written.]

That the Landlord issued a notice to end tenancy for landlord's use of property on February 1, 2017, is not disputed. Further, the parties agreed that the Landlord's son did not move into the rental unit as intended. This was supported by an advertisement posted on Craigslist the day after the Tenant vacated the rental unit. Accordingly, pursuant to section 51(2) of the *Act*, I grant the Tenant a monetary award of \$4,200.00 as additional compensation.

With respect to the Tenant's claim for the return of double the amount of the security deposit, I find the Tenant provided the Landlord with his forwarding address in writing, in person, on

March 25, 2017. The Landlord acknowledged receipt of the Tenant's forwarding address on that date. Section 38 of the *Act* confirms that a landlord has 15 days after the later of the date the tenancy ends or the date the forwarding address is received in writing. In this case, the Tenant vacated the rental unit on April 4, 2017. Accordingly, the Landlord had until April 19, 2017, to make a claim against the security deposit by filing an application for dispute resolution or return the deposit. The Landlord's Application was received at the Residential Tenancy Branch on May 15, 2017, after the deadline set out above. Accordingly, I find the Tenant is entitled to a monetary award of \$2,100.00, which is double the amount of the security deposit held by the Landlord.

I find the Tenant is entitled to a total monetary award of \$6,300.00.

#### Set Off of Claims

I have found the Landlord has demonstrated an entitlement to recover \$1,030.00 from the Tenant. However, I have found that the Tenant has demonstrated an entitlement to recover \$6,300.00 from the Landlord.

Setting off the amounts owed (\$6,300.00 – \$1,030.00), I order, pursuant to section 67 of the *Act*, that the Landlord pay the Tenant the sum of \$5,270.00.

I find both parties had partial success and decline to grant recovery of filing fees paid to either party.

#### Conclusion

The Tenant is granted a monetary order in the amount of \$5,270.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 3, 2017

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Residential Tenancy Branch