



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	MND MNDC MNSD FF O
	Tenant:	MNDC

### 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 September 22, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant’s Application was made on January 29, 2018 (the “Tenant’s Application”). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

Both parties attended the telephone conference hearing at the appointed date and time, and provided affirmed testimony.

The parties confirmed service and receipt of each other’s Application and evidence packages by registered mail. Neither party raised any issues with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the parties have been sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

During the hearing, the parties referred to previous dispute resolution proceedings, which I have summarized here. On February 24, 2017, after considering the Landlord's application by Direct Request Proceeding, pursuant to section 55(4) of the *Act*, an adjudicator granted the Landlord an order of possession and a monetary order for unpaid rent. The Tenant submitted an Application for Review Consideration, seeking a review of the decision and orders, pursuant to section 79 of the *Act*. The bases for the request for a review were that the Tenant was unable to attend the hearing for reasons that could not be anticipated and were beyond his control, and fraud. In a decision dated March 20, 2017, an arbitrator dismissed the Tenant's Application for Review Consideration and ordered that the original decision and orders would stand.

Further, in a decision issued on September 1, 2017, the Tenant was awarded double the amount of the security deposit, pursuant to section 38 of the *Act*. The Landlord submitted an Application for Review Consideration, seeking a review of the decision and order, pursuant to section 79 of the *Act*. The basis for the request for a review was that the Landlord had new and relevant evidence that was unavailable at the time of the original hearing. In a decision dated October 6, 2017, an arbitrator dismissed the Landlord's Application for Review Consideration and ordered that the original decision would stand.

The related file numbers are provided above for ease of reference. However, as the issue of the security deposit was determined during previous dispute resolution proceedings, I find the issue is *res judicata*. The Landlord's Application to retain the security deposit – which the Landlord continues to hold, despite the previous order – is dismissed. It has not been considered further in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order 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 that the Landlord comply with the *Act*, regulations, and or the tenancy agreement?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a fixed-term tenancy began on October 1, 2015. The tenancy ended when the Tenant vacated the rental unit on February 28, 2017. The parties agreed that rent in the amount of \$900.38 per month was due on the first day of each month. The Tenant paid a security deposit of \$425.00, which the Landlord holds.

### The Landlord's Claim

The Landlord's claim was summarized in a Monetary Order Worksheet, dated September 22, 2017. First, the Landlord claimed \$150.00 to change locks at the rental unit. She testified the Tenant sent her the keys by registered mail on February 24, 2017, but that the Tenant subsequently entered the rental unit with additional keys she did not authorize the Tenant to make. She felt she had to change the locks for safety concerns. The locks were changed on or about March 27, 2017. In support, the Landlord submitted a signed letter from M.M., confirming he changed the locks on the outer garage door and the front entrance.

In reply, the Tenant testified he did return to the unit as alleged to complete some of the cleanup. However, he stated that he left the keys in the mailbox when he vacated the rental unit.

Second, the Landlord claimed \$50.00 to repaint a wall in the rental unit. She testified the Tenant drilled holes in the wall and painted it a different colour without her approval. Two photocopied images depicting the repaired holes and painted wall were submitted in support. In addition, the Landlord submitted a type-written, unsigned letter from S.G. in support of this aspect of the claim.

In reply, the Tenant acknowledged painting the wall a different colour.

Third, the Landlord claimed \$50.00 to repaint an entry door in the rental unit. She testified to her belief that it was scratched when the Tenant was moving out of the rental unit. The Landlord testified it appeared the Tenant tried to fix the door unsuccessfully.

A photographic image depicting what appear to be scratches on a door was submitted into evidence.

In reply, the Tenant testified that he notices the scratches on the way out and “hit it” with some paint when he was moving out of the rental unit. The Tenant noted a condition inspection report was not completed by the parties at the beginning or end of the tenancy.

Fourth, the Landlord claimed \$150.00 to shampoo the carpets in the rental unit at the end of the tenancy. The Landlord confirmed she did not have a receipt in support of this aspect of her claim. However, the Landlord did submit a Cleaning Checklist document, witnessed by S.P. on February 28, 2017.

In reply, the Tenant testified that stains in the rental unit were caused due to a flood in the rental unit in December 2016. The Tenant noted a condition inspection report was not completed by the parties.

Fifth, the Landlord claimed \$250.00 for general cleaning at the end of the tenancy. This amount was calculated based on 10 hours of work at \$25.00 per hour. The Landlord testified there was mold on the window sills, baseboards, curtains, and kitchen cupboards because the Tenant kept the heat turned up. The Landlord submitted a signed, type-written letter, dated June 12, 2017, confirming S.C. had helped with cleaning for “approximately 3 hours”.

In reply, the Tenant testified the rental unit was clean at the end of the tenancy. He referred to photographic images submitted with his evidence, depicting the interior of the rental unit. Further, the Tenant stated that mold is caused by cold and damp conditions, not by heat. The Tenant noted a condition inspection report was not completed by the parties.

Sixth, the Landlord claimed \$25.00 to remove “junk” in the rental unit at the end of the tenancy. Specifically, the Landlord testified that she had to enter the rental unit early because of the smell of rotting food emanating from a garbage bag in the rental unit. She stated that various junk was also left in the living room.

In reply, the Tenant testified there was no junk left in the rental unit as alleged, as depicted in the Landlord’s photographic evidence. Rather, he suggested that the

Landlord entered the rental unit and took the pictures before he had finished moving out. The Tenant testified further that the Landlord entered the rental unit illegally on a number of occasions during the tenancy.

Seventh, the Landlord claimed \$407.33 to replace a standard bathroom fan with an automatic fan in or about January 2017. She stated she elected to do this out of concern for mold in the rental unit. A receipt for the purchase and installation was submitted with the Landlord's documentary evidence.

In reply, the Tenant testified there was no mold issue in the rental unit as he had previously addressed it. Further, the Tenant submitted that it was the Landlord's choice to replace a fan that was functioning.

Eighth, the Landlord claimed \$900.38 for unpaid rent at the end of the tenancy. She testified that the Tenant submitted an Application for Review Consideration with respect to a decision and orders issued by an adjudicator, referred to above. The Landlord submitted that she could not reasonably have re-rented the unit until the Tenant's Application for Review Consideration was determined. The decision on the Application for Review Consideration was issued on March 20, 2018.

In reply, the Tenant denied he sought a review of the order of possession but only disputed the monetary claim.

Ninth, the Landlord claimed \$100.00 in recovery of a filing fee paid for previous dispute resolution proceedings. The file number related to the previous matter is included above for ease of reference.

Tenth, the Landlord claimed \$34.02 for registered mail charges and \$50.00 for photocopies made in preparation for the hearing. The Landlord was advised during the hearing that costs incurred to prepare for a hearing are generally not compensable.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Landlord's Application.

#### The Tenant's Claim

The Tenant's claim was summarized on a Monetary Order Worksheet, dated January 29, 2018. First, the Tenant claimed \$420.00 to paint a brick façade at the rental property. According to the Tenant, the parties agreed he would paint the façade and

the Landlord would remove the base of the fireplace. As the Landlord did not remove the lower portion of the fireplace, the Tenant sought to be compensated for the painting he completed. The amount claimed is an estimate of the value of the work completed by the Tenant. In support, the Tenant submitted photographic images of the brick façade depicting the painting in progress.

In reply, the Landlord testified the agreement stipulated that she would provide paint so the Tenant could paint the brick façade.

Second, the Tenant claimed \$85.60 to repair a broken desk drawer in the rental unit. The Tenant testified the Landlord broke the drawer when the Landlord illegally entered the rental unit. Photographic images of the broken desk were submitted with the Tenant's documentary evidence.

In reply, the Landlord denied breaking the Tenant's desk, or entering the rental unit illegally.

Third, the Tenant claimed \$220.00 for the cost to redirect his mail. He testified that his mail was returned to sender by the Landlord, causing him to miss important documents such as tax receipts. In support, the Tenant submitted a type-written letter from a friend, D.C., who cared for the Tenant's rental unit when he was away and did not notice mail being delivered as usual. The Tenant stated the amount sought is based on the time he spent making arrangements to have his mail sent to a new address.

In reply, the Landlord testified all of the mail was delivered to one box, and that she returned the Tenant's mail to sender after the Tenant vacated the rental unit.

Fourth, the Tenant claimed \$1,307.00 for loss of quiet enjoyment based on a text message and letters received from the Landlord. Specifically, the Tenant testified that an electric heater in the rental unit made grinding noise that disturbed his quiet enjoyment of the rental unit for eight nights until it was repaired. In addition, the Tenant stated he had to vacate the rental unit and stay in a hotel for ten nights because of the noise from dehumidifiers and fans used to address a flood that occurred in the rental unit on or about December 14, 2016. No claim was made or receipts submitted for the cost of the hotel. Finally, the Tenant testified the Landlord accessed the rental unit without notice on a number of occasions, until he eventually refused to permit the Landlord to access the rental unit.

With respect to the heater, the Landlord testified that it was fixed in three days, contrary to the Tenant's testimony. With respect to the Tenant's claim for losses due to flooding, the Landlord testified that the tenancy agreement required the Tenant to have insurance at the time of the flood, but that he did not. The Landlord denied entering the rental unit without notice.

Fifth, the Tenant claimed \$60.00 for labour. He testified that he vacuumed the floors with a wet-vac when the flood occurred. He estimated that he spent three hours helping the Landlord at \$20.00 per hour.

In reply, the Landlord denied this aspect of the Tenant's claim.

Finally, the Tenant claimed \$35.82 for colour photocopies in preparation for the hearing. The Tenant was advised during the hearing that costs incurred to prepare for a hearing are generally not compensable.

#### 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 \$150.00 to change the lock at the rental unit, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover the amount sought. As acknowledged by the Landlord, the Tenant returned keys to the Landlord by registered mail. Further, I find it is more likely than not that the additional keys were left at the rental unit when he vacated. Further, I find there is insufficient evidence before me to conclude the Landlord was justified in changing the locks due to *bona fide* safety concerns. This aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for \$50.00 to repaint a wall in the rental unit, I find the Landlord is entitled to recover this amount. During the hearing, the Tenant acknowledged painting the wall a different colour without the agreement of the Landlord. The Landlord is granted a monetary award in the amount of \$50.00.

With respect to the Landlord's claim for \$50.00 to repaint an entry door in the rental unit, I find there was insufficient evidence before me that the Landlord is entitled to recover this amount. The photographic image submitted by the Landlord was very poor quality. Further, the Tenant denied causing the scratches and noted that the Landlord's evidence did not include a move-in condition inspection report to confirm the condition of the door at the beginning of the tenancy. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$150.00 to shampoo the carpets in the rental unit, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover this amount. Although the photographic evidence depicts stains on the carpet, I find it is more likely that not that they were caused by flooding that was not due to the Tenant's negligence. I also note this aspect of the Landlord's claim was not supported by a receipt, or a properly completed condition inspection report. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$250.00 for general cleaning at the end of the tenancy, I find there is insufficient evidence to conclude the Landlord is entitled to recover this amount. Although the Landlord submitted a letter suggesting she was assisted for "approximately 3 hours", I note this aspect of the claim was not supported



by a properly completed condition inspection report. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$25.00 to remove "junk" in the rental unit at the end of the tenancy, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover this amount. Although the Landlord submitted some photographs depicting the Tenant's belongings in the rental unit, the Tenant testified these images were taken before he had finished cleaning. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$407.33 to replace a bathroom fan at the end of the tenancy, I find there is insufficient evidence to conclude the Landlord is entitled to recover this amount. The undisputed testimony is that the Landlord installed the new bathroom fan before the end of the tenancy out of concerns about mold, which the Tenant denied. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$900.38 for unpaid rent at the end of the tenancy, I find the Landlord is entitled to recover this amount. As noted above, an adjudicator granted the Landlord an order of possession and a monetary order for unpaid rent. However, the Tenant sought a review of the adjudicator's decision by filing an Application for Review Consideration. A final decision was not issued by an arbitrator until March 20, 2017. I find the Landlord reasonably concluded she could not re-rent the unit until the Tenant's Application for Review Consideration was determined. The Landlord is granted a monetary award in the amount of \$900.38.

With respect to the Landlord's claim for \$100.00 in recovery of a filing fee paid for previous dispute resolution proceedings, I find the filing fee for previous proceedings are not recoverable in subsequent proceedings. This aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for \$34.02 for registered mail charges and \$50.00 for photocopies made in preparation for the hearing, these items are not generally recoverable in dispute resolution proceeding before the Residential Tenancy Branch. This aspect of the Landlord's Application is dismissed.

I find the Landlord has demonstrated an entitlement to a monetary award in the amount

of 950.38, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Repaint wall:	\$50.00
Unpaid rent:	\$900.38
<b>TOTAL:</b>	<b>\$950.38</b>

#### The Tenants' Application

With respect to the Tenant's claim for \$420.00 to paint a brick façade at the rental property, I find there is insufficient evidence before me to confirm the terms of an agreement between the parties. The testimony of the parties was contradictory, and the alleged agreement was not reduced to writing. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$85.60 to repair a broken drawer in the rental unit, I find there is insufficient evidence before me that the Landlord broke the drawer, as alleged by the Tenant, or that the Tenant incurred any loss because of the broken drawer. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$220.00 for the cost to redirect his mail, I find there is insufficient evidence before me to conclude the Tenant is entitled to be compensated for time he spent providing organizations with his new address. Rather, I find that, in the absence of an agreement to deal with the Tenant's mail in a particular way after the tenancy ended, the Landlord's decision to return mail to the sender was reasonable in the circumstances. I also note the Tenant testified he was able to contact the senders and receive his mail. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$1,307.00 for loss of quiet enjoyment based on a text message and letters received from the Landlord, section 28 of the *Act* states:

*A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

*(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

*The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.*

...

*Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.*

*A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.*

[Reproduced as written.]

After careful consideration of the above, I find there is insufficient evidence before me to conclude the Tenant experienced a loss of quiet enjoyment as contemplated under Policy Guideline #24. Specifically, I find that the noise from the electric heater, fans and dehumidifiers, although irritating, were temporary in nature and were addressed by the Landlord in a timely fashion. I note the Tenant did not make a claim for or provide receipts for his hotel stay. Further, I find there is insufficient evidence before me that the Landlord repeatedly entered the Tenant's rental unit without proper notice. The Landlord denied doing so. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$60.00 for labour for assistance provided after flooding occurred in the rental unit, I find there is insufficient evidence before me to conclude the Tenant is entitled to the amount sought. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$35.82 for colour photocopies submitted with the Tenant's documentary evidence, these expenses are not compensable under the *Act*. This aspect of the Tenant's Application is dismissed.

I find the Tenant has not demonstrated an entitlement to a monetary award. The Tenant's Application is dismissed.

#### Summary of Claims

I find that the Tenant's Application is dismissed, without leave to reapply.

I find that the Landlord has demonstrated an entitlement to a monetary award in the amount of \$950.38. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,050.38, which is comprised of a monetary award described above and recovery of the \$100.00 filing fee paid to make the Landlord's Application.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$1,050.38. 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: May 3, 2018

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Residential Tenancy Branch