



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNR FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 15, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order of possession based on a mutual agreement to end a tenancy; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by A.L., an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, A.L. confirmed the Landlord's Application package and documentary evidence were served on the Tenant by registered mail on August 21, 2018. Tracking information provided with the Landlord's documentary evidence confirmed receipt on August 24, 2018. I find the Application package and documentary evidence was received by the Tenant on August 24, 2018.

On behalf of the Landlord, A.L. was given 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. 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 money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order of possession based on a mutual agreement to end a tenancy?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

On behalf of the Landlord, A.L. confirmed the tenancy began on June 1, 2013. Rent in the amount of \$720.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$350.00, which the Landlord holds.

First, the Landlord claimed \$1,000.00 for an insurance deductible paid as a result of water damage in the rental unit. A.L. testified the Tenant advised after-the-fact that they were aware of a leak for several months but did not report it to the Landlord. Water damage occurred as a result. Specifically, A.L. testified that walls and carpeting had to be replaced, and that mold was found in the walls. In support, the Landlord submitted a Work Authorization Contract confirming payment of the \$1,000.00 deductible.

Second, the Landlord claimed \$714.36 for a garbage bin. A.L. testified the parties agreed the garbage bin would be dropped off to help the Tenant with her move-out. The parties agreed the Tenant would pay for the garbage bin. Although the Landlord has paid for the garbage bin, the Tenant has reimbursed only \$150.00, leaving \$564.36 outstanding. In support, the Landlord submitted a copy of a receipt dated July 5, 2018.

Third, Landlord claimed for unpaid rent. A.L. testified the parties entered into a Mutual Agreement to End a Tenancy, effective August 1, 2018. However, the Tenant did not vacate the rental unit until September 2018. The Tenant did not pay rent when due on August 1 or September 1, 2018, leaving rent in the amount of \$1,440.00 outstanding. In support, the Landlord submitted a copy of the Mutual Agreement to End a Tenancy.

Finally, the Landlord sought an order of possession based on the Mutual Agreement to End a Tenancy. A.L. testified that although it appears the Tenant vacated the rental unit in September 2018, some of the Tenant's belongings remain. An order of possession is requested out of an abundance of caution.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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

With respect to the Landlord's claim for \$1,000.00, I find the damage described by A.L. was exacerbated by the Tenant's failure to report the leak in a timely manner, despite being aware of the issue for several months. Therefore, I find the Landlord is entitled to recover the \$1,000.00 deductible paid and grant the Landlord a monetary award in that amount.

With respect to the Landlord's claim for \$714.36 for a garbage bin, I find the parties agreed the Tenant would reimburse the Landlord for this expense, but that only \$150.00 has been paid to the Landlord. I find the Landlord is entitled to a monetary award of \$564.36 for the amount outstanding.

With respect to the Landlord's claim for unpaid rent, section 26 of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find the parties agreed to end the tenancy on August 1, 2018. However, A.L. testified the Tenant did not vacate the rental unit until September 2018, and that rent for the months of August and September 2018 was not paid when due. I find the Landlord is entitled to a monetary award of \$1,440.00 for unpaid rent (\$720.00 x 2).

In addition, the Landlord sought an order of possession. In this case, A.L. testified the parties entered into a Mutual Agreement to End a Tenancy, effective August 1, 2018. Although it appears the Tenant vacated the rental unit in September 2018, some of the Tenant's belongings have been left behind. I find the Landlord is entitled to an order of possession based on the Mutual Agreement to End a Tenancy, which will be effective two (2) days after service on the Tenant.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. In addition, I order that the Landlord may retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,754.36, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Insurance deductible:	\$1,000.00
Garbage bin:	\$564.36
Unpaid rent:	\$1440.00
Filing fee:	\$100.00
LESS security deposit:	(\$350.00)
<b>TOTAL:</b>	<b>\$2,754.36</b>

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,754.36. The monetary 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 5, 2018

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Residential Tenancy Branch