



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

On March 14, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, compensation for losses, unpaid rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords attended the conference call hearing; however, the Tenant did not attend at any time during the 45-minute hearing. The Landlord testified that he served the Tenant with the Notice of Hearing by sending it via registered mail on March 15, 2018 to the Tenant’s forwarding address and it was received and signed for according to the Canada Post website. I find that the Tenant has been duly served with the Notice of Hearing, in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. As the Tenant did not call into the conference, the hearing was conducted in her absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlords.

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

Should the Landlords receive a Monetary Order for damages and unpaid rent, in accordance with Section 67 of the Act?

Should the Landlords be reimbursed for the cost of the filing fee, in accordance with Section 67 of the Act?

### Background and Evidence

The Landlords provided the following undisputed evidence:

The fixed term, one-year tenancy began on September 1, 2017. The monthly rent of \$1550.00 was payable on the first of each month. The Landlord collected and still holds a security deposit of \$750.00.

The Landlord testified that the Tenant originally signed the lease with another tenant. By the end of the tenancy, the Tenant lived on her own and was responsible to pay the full rent. The Tenant only paid \$775.00 of the rent in January 2018 and only \$780.00 of the rent in February 2018. On February 16, 2018, the Landlord personally served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent (the "Notice"), with a move-out date of February 26, 2018.

The Landlord attempted to arrange a Move-Out Condition Inspection with the Tenant and served a Notice of Final Opportunity to Schedule a Condition Inspection to the Tenant on February 16, 2018 for an inspection date of February 28, 2018. The Landlord is unsure of when the Tenant moved out, but she did so without notice, without returning the keys and without attending the Move-Out Condition Inspection on February 28, 2018. The Landlord suspects the Tenant moved out of the rental unit sometime between February 17 and 27, 2018.

The Landlord conducted the Move-Out Condition Inspection on February 28, 2018, without the Tenant, but in company a witness. The Landlord stated that the rental unit was left dirty, with garbage on the floor, junk out on the balcony, a large desk and a foam mattress left in the living room and with blinds that were damaged.

The Landlord submitted a Monetary Order Worksheet that itemized the costs associated to disposal costs, storage of the Tenant's items, the fixing of minor damages, re-keying the rental unit, cleaning of the unit and of the carpet. The Landlord also included receipts and invoices for the costs that he incurred to address all of the above stated issues.

The Landlord is claiming \$1,545.00 for unpaid rent and \$1,223.00 in costs for fixing and cleaning the rental unit. The total monetary claim the Landlord is making is \$2,768.00.

### Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 26 of the Act explains that the 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 this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 37 states that when the Tenant vacates the rental unit, the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and give the Landlord all the keys for the rental unit. I accept the Landlord's undisputed evidence that the Tenant failed to return the keys for the rental unit and did not leave the rental unit in an undamaged and reasonably clean condition. I find that the Tenant is in breach of Section 37 of the Act.

I accept the Landlord's testimony and evidence that the Tenant failed to pay her rent for a total of \$1,545.00 and that it cost the Landlord \$1223.00 to address the cleaning, fixing and re-keying of the rental unit. I find that the Landlord has, in accordance with Section 67 of the Act, established a monetary claim and I award the Landlord a Monetary Order in the amount of \$2,768.00, as claimed in his Application. I find that Landlords' Application has merit and that he should be reimbursed for the cost of the filing fee, in accordance with Section 72 of the Act.

Conclusion

The Landlords have established a monetary claim, in the amount of \$2,868.00, which includes \$2,768.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenant's security deposit of \$750.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlords a Monetary Order for the balance of \$2,118.00 in accordance with Section 67 of the Act. 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.

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 2, 2018

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Residential Tenancy Branch