



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, MNRL, MNDCL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on September 12, 2018. The landlord entered into evidence the Canada Post Tracking receipt and number confirming this registered mailing. The landlord also entered into evidence a printout of the Canada Post-delivery progress report which states that the tenant signed for the package on September 13, 2018. I find that the landlord was served with this package on September 13, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on January 1, 2018 and ended on July 14, 2018. This was a fixed term tenancy originally set to end on December 31, 2019. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a single-family dwelling.

The landlord provided the following undisputed testimony. While this tenancy officially began on January 1, 2018 the landlord allowed the tenant to move in early on December 19, 2017 for no extra charge. The landlord testified that since this tenancy has now ended much sooner than agreed in the tenancy agreement and under poor circumstances, she is seeking to recover rent from the tenant from December 19, 2017- December 31, 2017 in the amount of \$839.00.

The landlord provided the following undisputed testimony. The tenant stopped paying rent in April of 2018. The landlord issued the tenant a 10 Day Notice to End tenancy for unpaid rent (the "10 Day Notice") and the tenant filed an application with the Residential Tenancy Branch to cancel that notice. The 10 Day Notice was upheld and the landlord

was issued an Order of Possession which led to the end of this tenancy. The previous decision and Order were entered into evidence.

The landlord testified that the tenant did not provide his forwarding address when he moved out and she had to hire a skip tracer to locate the tenant. The landlord entered into evidence a receipt in the amount of \$309.75. The landlord is seeking to recover this amount from the tenant.

The landlord testified that the tenant left the subject rental property very dirty and entered photographs showing same into evidence. The landlord testified that she hired a professional cleaner to clean the subject rental property and entered a receipt for same into evidence in the amount of \$420.00. The landlord is seeking to recover this amount from the tenant.

The landlord testified that the tenant failed to maintain the yard and that it required serious remediation after the tenant moved out. The landlord testified that the tenant stole a thermostat and shower head that were new when the tenant moved in and damaged some drywall in a window sill. Photographs of same were entered into evidence. The landlord testified that the drywall was approximately 40 years old. The landlord testified that they hired a handy person to cut the grass, replace the thermostat and shower head and repair the drywall. The landlord entered into evidence a receipt for the above in the amount of \$690.00. The receipt did not break down costs for each item and only stated the total cost of all services.

The landlord testified that the tenant did not pay rent for April to July 14, 2018. The landlord is seeking to recover rent in the amount of \$2,000.00 per month for the months of April-June 2018 and ½ month's rent for July in the amount of \$1,000.00 for a total of \$7,000.00. The landlord testified that the tenant's April 2018 rent cheque bounced and that she was charged \$5.00 by her financial institution. The landlord is seeking to recover this amount from the tenant. A banking statement showing same was entered into evidence.

The landlord testified that it took approximately two weeks to get the property cleaned up and ready to be marketed for rent. The landlord testified that she hired an agent to find a new tenant. The landlord testified that the agent charged her \$1,102.50 to find a new tenant. A receipt showing same was entered into evidence. The landlord is seeking to recover this amount from the tenant. The landlord testified that the agent incurred an

advertising fee of \$47.00 in marketing the unit. A receipt showing same was entered into evidence. The landlord is seeking to recover the \$47.00.

The landlord testified that her agent put the subject rental property on the market as soon as it was clean and a new tenant moved in on August 14, 2018, just two weeks after it was habitable. The new tenancy has a rental rate of \$2,100.00 per month. The new tenants paid ½ rent for August 2018. The landlord testified that she is seeking \$2,000.00 in lost rent from July 14, 2018 – August 14, 2018.

The landlord testified that the tenant did not pay utilities at the subject rental property as was required under the tenancy agreement. The utilities were in the landlord's name and were paid by the landlord who is seeking to recover these charges. The landlord entered into evidence the following water bills:

| <b>Date Range</b>                  | <b>Amount</b>   |
|------------------------------------|-----------------|
| October 1, 2017- December 31, 2017 | \$19.51         |
| January 1, 2018 – March 31, 2018   | \$538.22        |
| April 1, 2018- June 30, 2018       | \$110.87        |
| <b>Total</b>                       | <b>\$668.60</b> |

The landlord entered into evidence the following BC Hydro bills which she paid:

| <b>Date Range</b>                   | <b>Amount</b>     |
|-------------------------------------|-------------------|
| December 2, 2017 – January 14, 2018 | \$980.97          |
| January 18, 2018 – March 19, 2018   | \$586.81          |
| March 20, 2018 - May 17, 2018       | \$455.76          |
| May 18, 2018 – July 18, 2018        | \$93.27           |
| <b>Total</b>                        | <b>\$2,116.81</b> |

The landlord testified that the December 2, 2017 – January 17, 2018 bill includes a security deposit charge in the amount of \$474.00 which he is not seeking to recover from the tenant.

The landlord testified that she incurred approximately \$145.00 worth of “incidental” costs in cleaning the subject rental property and preparation for this hearing. No receipts to substantiate the above claim were entered into evidence

## Analysis

### Rent Related Claims

Residential Tenancy Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

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

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,00.00 on the first day of each month from April - July 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$8,000.00 in unpaid rent.

Residential Tenancy Policy Guideline 3 states that if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Based on the undisputed testimony of the landlord and her photographic evidence, I find that the subject rental property was too dirty to be rented out for July 15, 2018. I find that the landlord acted promptly and prudently to complete the required cleaning and repairs and to list the property for rent. I find that the landlord's actions mitigated her damages. I find that the tenant is responsible for the loss of rent suffered by the landlord for ½ of August 2018, less the increased rental rate received from the new tenants, according to the following calculation:

$$\begin{aligned} & \$1,000.00 \text{ (}\frac{1}{2}\text{ months' rent)} - \$50.00 \text{ (increased rent received from new tenants)} \\ & = \$950.00. \end{aligned}$$

I find that the landlord is not entitled to recover rent from December 19, 2017- December 31, 2017 because the parties had a verbal agreement that that period would

be rent free. The terms of the verbal agreement are not voided because the tenant breached their written tenancy agreement.

### Cleaning and Repairs

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the landlord's testimony, I find that the rental unit required significant cleaning. The landlord submitted into evidence a cleaning receipt in the amount of \$420.00. I find that the tenant is responsible for this fee.

Residential Tenancy Policy Guideline 1 states that a tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. I find that the tenant failed to complete routine yard maintenance. The receipt entered into evidence by the landlord did not set out what amount of the total bill was for yard maintenance and what amount was for the thermostat, the shower head and the drywall. I cannot therefore complete a useful life calculation on the above listed items to determine the appropriate amount the landlord is entitled to collect. I therefore cannot grant the landlord recovery of the receipt in the amount of \$690.00.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proven the infraction of a legal right for the above items, but has not proven the loss suffered.

I find that the landlord is entitled to recover nominal damages in the amount of \$300.00 for the unmaintained yard. I find that the tenant took the thermostat from the subject rental property, contrary to section 37 of the *Act* and the landlord is therefore entitled to nominal damages in the amount of \$20.00. I find that the tenant took the showerhead from the subject rental property, contrary to section 37 of the *Act* and the landlord is therefore entitled to nominal damages in the amount of \$50.00. I find that the tenant damaged the drywall at the subject rental property, contrary to section 37 of the *Act* and the landlord is therefore entitled to nominal damages in the amount of \$50.00

## Utilities

The tenancy agreement states that the tenant is responsible for all utility charges including water and electricity. I find that the tenant is responsible for all utility charges from January 1, 2018 -July 31, 2018 as that is the term of the tenancy. I find that the landlord is not entitled to recover utility charges from before January 1, 2018 as no evidence as to what the agreement was regarding utilities from December 19, 2017- December 31, 2017 was provided. I find that the water invoice dated October 1, 2017- December 31, 2017 in the amount of \$19.51 was before the tenancy began and is therefore not recoverable.

I find that the tenant is responsible for the below charges:

| <b>Date Range</b>                | <b>Amount</b>   |
|----------------------------------|-----------------|
| January 1, 2018 – March 31, 2018 | \$538.22        |
| April 1, 2018- June 30, 2018     | \$110.87        |
| <b>Total</b>                     | <b>\$694.09</b> |

I find that the BC Hydro bill from December 2, 2017 - January 17, 2018 is not recoverable from the landlord as the invoice does not provide a breakdown of what charges were from December 2- 31, 2017 and which were from January 1, 2018- January 17, 2018. However, I find that some of this BC Hydro bill was incurred during the official term of this tenancy and that the landlord suffered a loss; therefore, I find that the landlord is entitled to recover \$300.00 in nominal damages for the December 2, 2017- January 17, 2018 BC Hydro bill.

I find that the tenant is responsible for the below charges:

| <b>Date Range</b>                 | <b>Amount</b>     |
|-----------------------------------|-------------------|
| January 18, 2018 – March 19, 2018 | \$586.81          |
| March 20, 2018 - May 17, 2018     | \$455.76          |
| May 18, 2018 – July 18, 2018      | \$93.27           |
| <b>Total</b>                      | <b>\$1,135.84</b> |

### Remaining Monetary Claim

I find that the landlord incurred the tenant finding fee in the amount of \$1,102.50 because the tenant breached section 26 of the *Act* by not paying rent which led to the end of this tenancy. I find that the landlord is entitled to recover this fee from the tenant.

I find that since the tenant did not actually incur the \$47.00 advertising cost, she is not entitled to recover it from the tenant.

I find that the tenant's April 2018 rent cheque bounced which caused a \$5.00 charge to the landlord's bank account. I find that the tenant is responsible for this charge.

Section 72 of the *Act* addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associate with litigation to either party to a dispute. Accordingly, the landlord's claim for \$309.75 for skip tracing is dismissed.

I find that since the landlord did not provide any receipts or an itemized break down of her claim for "incidentals" in the amount of \$145.00 I find that she has failed to prove the value of her claim. Therefore, the landlord's claim for \$145.00 for "incidentals" is dismissed.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

| <b>Item</b>                                  | <b>Amount</b> |
|--|---------------|
| April – July 2018 unpaid rent                | \$8,000.00    |
| Loss of rent August 1, 2018- August 13, 2018 | \$950.00      |
| Cleaning                                     | \$420.00      |
| Yard maintenance nominal damages             | \$300.00      |



|                             |                    |
|-----------------------------|--------------------|
| Thermostat nominal damages  | \$20.00            |
| Shower head nominal damages | \$50.00            |
| Drywall nominal damage      | \$50.00            |
| Water utility charges       | \$694.09           |
| BC Hydro charges            | \$1,135.84         |
| BC Hydro nominal damages    | \$300.00           |
| Tenant finding fee          | \$1,102.50         |
| Bank charge                 | \$5.00             |
| Filing fee                  | \$100.00           |
| <b>TOTAL</b>                | <b>\$13,127.43</b> |

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 11, 2019

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Residential Tenancy Branch