



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	For the Landlord:	MNDCL-S, MNDL-S, MNRL-S, FFL
	For the Tenant:	MNDCT, MNSD, FFT

### Introduction

This decision is in respect of the landlord's and tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 13, 2018 and on December 17, 2018, respectively.

The landlord sought compensation under sections 67 and 72 of the Act for costs related to unpaid electricity, unpaid internet usage, a lock change, cleaning and repair and painting costs, for loss of partial rent, for estimate repair of tiles, for the loss of a mattress, and for the filing fee. The total amount being sought, excluding the mattresses for which there were no receipts submitted, and including the \$100.00 filing fee, was \$3,616.29.

The tenant sought compensation under sections 67 and 72 of the Act for costs related to (as stated in the tenant's Monetary Order Worksheet) a cleaning service, keys and fobs, the tenancy agreement, cash receipt for rent, and for the filing fee. The total amount sought, including the filing fee, was \$33,400.00.

A dispute resolution hearing was convened on January 14, 2019, and the landlord and his interpreter attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to compensation for the various claims as submitted in her application?
2. Is the tenant entitled to compensation for the various claims as submitted in their application?

Background and Evidence

The landlord, through her interpreter, testified that the tenancy commenced on September 1, 2017 and ended on August 31, 2018. Monthly rent was \$2,300.00 and the security deposit was \$2,300.00 (which is more than the amount permitted under section 19 of the Act, I note). A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that the tenant refused on two different occasions to conduct the walk-through inspection at the end of the tenancy and demanded the immediate return of the security deposit. The tenant also refused to return two key fobs and two keys. The landlord attempted to arrange a few different times and dates for the parties to complete the move out inspection, but the tenant was not particularly cooperative in this regard. In any event, the landlord completed both the move-in and move-out Condition Inspection Report and submitted these into evidence.

The landlord sought compensation for the following claims:

<b>Receipt and Claim For</b>	<b>Amount</b>
BC Hydro – unpaid electricity bill	\$49.94  (I note that the claim was \$39.94, but corrected to 49.94 during the hearing)
TELUS – unpaid additional Internet fee	5.60
Lock change for new keys – locksmith	91.00
Cleaning, repair and painting	1,968.75
Loss of Partial Rent for September 2018	800.00
Estimated future floor tile replacement	600.00
Filing fee	100.00
<b>TOTAL</b>	<b>\$3,615.29</b>

Regarding the BC Hydro and TELUS claim, these amounts were calculated for the period from July 14, 2018 to September 11, 2018, representing the time period beyond which the tenant was in the rental unit, and from when the new tenant moved in. This extended date covers the time that the new tenant was prevented from moving in on account of the poor condition that the tenant left the rental unit in. Bills/invoices were submitted into evidence in support of this claimed amount.

Regarding the locksmith fee, this was incurred because the tenant refused to return the keys and fobs, thus causing the landlord to incur the loss to hire a locksmith. A receipt for the amount claimed was submitted into evidence.

Regarding the cleaning, repairing, and painting fee, the tenant did not clean the rental unit and left it in a rather unsavoury state. The landlord submitted many photographs depicting the condition of the rental unit, including the uncleanliness and various damages. In support of the claim the landlord submitted a receipt for the cleaning, repair and painting.

Regarding the partial loss of rent, the landlord testified that the cleaning was so extensive, and, given the difficulty of procuring such services, and that of the locksmith over the long weekend, the rental unit was not ready for a new tenant to move in until September 11, 2018. As such, the landlord lost a 1/3 of the month's rent (\$2,400.00) and submitted a copy of the new tenant's tenancy agreement in support of this claim.

Regarding the tile replacement, the landlord had obtained a very rough estimate as to costs from a renovation contractor. Finally, as noted in the Introduction, the landlord conceded (and essentially waived her claim) that she did not have receipts or other documentary proof of the cost of the damaged mattress.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenant failed to comply with the tenancy agreement in respect of their obligations to pay for electricity and the internet, failed to comply with section 37(2)(b) by refusing to return the keys to the landlord, failed to comply with section 37(2)(a) by not leaving the rental unit reasonable clean and undamaged except for reasonable wear and tear, and, failed to comply with section 37(2)(a) which resulted in the landlord losing rent from a future tenant. And, but for the breaches of the Act and of the tenancy agreement, the landlord would not have sustained the losses claimed in her application.

For all aspects of her claim except for the mattresses, for which there was no receipt, and except for the estimate of tile replacement, for which there was no written estimate submitted into evidence, I find that the applicant has not proven the amount and value of the various items claimed. That having been said, as the landlord did prove that the tenant breached the Act, I award a nominal damage award in the amount of \$100.00.

As the amounts claimed are reasonable, and made within a very short time of the tenancy ending, and given the absence of any evidence to the contrary, I find that the landlord did was what reasonable in minimizing her losses.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for the following:

BC Hydro – unpaid electricity bill	\$49.94
TELUS – unpaid additional Internet fee	5.60
Lock change for new keys – locksmith	91.00
Cleaning, repair and painting	1,968.75
Loss of Partial Rent for September 2018	800.00
Replacement floor tiles (nominal award)	100.00
Filing fee	100.00
<b>TOTAL</b>	<b>\$3,115.29</b>

I grant the landlord a monetary award in the amount of \$3,115.29. The landlord may retain the entire amount of the security deposit of \$2,300.00 in partial satisfaction of the award. Accordingly, I issue a monetary order in the amount of \$815.29.

As the tenant failed to attend the hearing and present her case, I dismiss her application in its entirety without leave to reapply.

### Conclusion

I grant the landlord a monetary order in the amount of \$815.29, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 14, 2019

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Residential Tenancy Branch