



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNR MNSD FF

### Introduction

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

- a monetary order for damage to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order permitting the Landlord to retain the security deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenant did not attend the hearing.

This matter was previously adjourned on 3 occasions at the Tenant's request. Accordingly, Notices of Dispute Resolution Hearing have been sent to the parties directly by the Residential Tenancy Branch. However, the Landlord testified that documentary evidence was served on the Tenant by registered mail on or about March 15, 2018, and on June 19, 2019. In the absence of evidence to the contrary, and pursuant to section 71 of the Act, I find the documentary evidence to be relied upon by the Landlord was sufficiently served for the purposes of the Act.

The Landlord was provided with a full 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.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent?
4. Is the Landlord entitled to an order permitting him to retain the security deposit?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

#### Background and Evidence

The Landlord testified the tenancy began on or about July 1, 2016, and ended on March 15, 2018. Rent in the amount of \$1,550.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$775.00 and a pet damage deposit of \$775.00, which the Landlord holds.

The Landlord's monetary claim was summarized in a Monetary Order Worksheet dated March 15, 2018. First, the Landlord claimed \$3,750.00 to repair and replace drywall, perform ceiling repairs, and paint the Tenant's rental unit. The Landlord testified the Tenant was aware of a leak in her rental unit on March 10, 2017, but did not report it to the Landlord until on or about March 14, 2017. The Landlord testified the Tenant acknowledged her awareness of the leak in evidence submitted at a previous dispute resolution hearing. According to the Landlord, the damage was worse because the Tenant would not allow him to access the rental unit to address the issue. In support, the Landlord submitted an invoice for repairs to the Tenant's rental unit, dated March 27, 2017, in the amount of \$3,750.00.

Second, the Landlord claimed \$735.00 for repairs to damage cause to his unit, which was caused by a leak in the Tenant's rental unit on or about October 20, 2017. According to the Landlord, he heard what he thought was a leak from his unit below. However, when he attended the Tenant's rental unit to investigate, the Tenant would not permit access. The Landlord submitted a type-written letter from the Tenant, dated October 20, 2017, in which the Tenant denied any leaks and reminded the Landlord that 24-hour's notice is required for entry to her rental unit. In support, the Landlord submitted an invoice for work in the Landlord's kitchen and bathroom, dated November 18, 2017, in the amount of \$735.00.

Third, the Landlord claimed \$255.00 for a plumber to repair a damaged pipe. According to the Landlord, the hot water tanks were replaced on or about October 26, 2017. They were replaced as a result of the leak that occurred on or about October 20, 2017, described above. The Landlord testified that it appeared that a hole had been made in the drywall and a pipe had been tampered with by the Tenant, causing damage in the Tenant's rental unit. Although the Landlord testified he was in possession of a photograph of the damage, it was not submitted into evidence. In support, the Landlord submitted a receipt for plumbing services, dated February 11, 2017, in the amount claimed.

Fourth, the Landlord claimed \$1,800.00 paid to a bailiff to enforce a writ of possession. According to the Landlord, the tenancy ended on March 15, 2018, pursuant to an order of possession issued on February 1, 2018, and a writ of possession issued on March 5, 2018. According to the Landlord, the Tenant initially refused to vacate the rental unit but called a mover when the bailiff attended to remove the Tenant from the rental unit. In support, the Landlord submitted a receipt for bailiff services, dated March 6, 2018, in the amount claimed. The Landlord also submitted a document from the bailiff confirming execution of a writ of possession on March 15, 2018.

Fifth, the Landlord claimed \$2,271.46 to replace two hot water heaters. According to the Landlord, the heaters were damaged on or about October 20, 2017. The Landlord testified he was advised by the technician that the leak described above forced the heaters to run constantly, damaging the coils, which could not be repaired or replaced. In support, the Landlord submitted a receipt for the cost to replace the heaters, dated October 26, 2017, in the amount claimed.

Sixth, the Landlord claimed \$400.00 to have locks replaced. According to the Landlord, locks were replaced on 7 occasions throughout the tenancy due to various occupants leaving the Tenant's rental unit. The locks were changed at the Tenant's request. A list confirming the approximate timing of the lock changes and the reason for each change was submitted into evidence by the Landlord.

Seventh, the Landlord claimed \$120.00 for BC Supreme Court filing fees. Specifically, the Landlord testified the cost was incurred to respond to obtain a writ of possession. In support, the Landlord submitted a receipt for the amount claimed.

Eighth, the Landlord claimed \$1,550.00 for lost rent for the month of March 2018. According to the Landlord, rent was not paid when due on March 1, 2018, and the Tenant did not vacate the rental unit until March 15, 2018, when the bailiff attended. The Landlord testified the Tenant's unit was not re-rented for several months.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and requested an order that the deposits held be applied in partial satisfaction of the claim.

### 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 Tenant. 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 \$3,750.00 to repair and replace drywall, perform ceiling repairs, and paint the rental unit, I find there is sufficient evidence before me to grant the relief sought. I am satisfied that the damage was caused by the Tenant's failure to report a leak in a timely manner. I also find the Landlord has submitted sufficient evidence to establish the value of his loss, and that the Landlord did what was reasonable in the circumstances to respond to the leak. The Landlord is granted a monetary award in the amount of \$3,750.00.

With respect to the Landlord's claim for \$735.00 to repair damage caused by a leak originating in the Tenant's rental unit, I find the Landlord is entitled to the relief sought. I am satisfied that the damage to his unit was caused by the Tenant's failure to permit the Landlord access to her rental unit to investigate and address the leak. Further, I find that the Landlord has submitted sufficient documentary evidence to establish the value of his loss, and that he did what was reasonable in the circumstances to respond to the leak. The Landlord is granted a monetary award in the amount of \$735.00.

With respect to the Landlord's claim for \$255.00 for a plumber to repair a leaking pipe, I find there is insufficient evidence before me to conclude that the Tenant tampered with and damaged the plumbing in the wall as claimed by the Landlord. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,800.00 paid to a bailiff to enforce a writ of possession, I find the Landlord is entitled to the relief sought. I am satisfied the cost was incurred because the Tenant failed to vacate the rental unit in accordance with the order of possession, and that the Landlord had to obtain a writ of possession and retain a bailiff to give effect to that order. As confirmed in the Landlord's evidence, which I accept, the Tenant did not vacate the rental unit until the bailiff attended. I find the Landlord has provided sufficient documentary evidence to establish the value of the loss, and did what was reasonable to give effect to the order of possession. The Landlord is granted a monetary award in the amount of \$1,800.00.

With respect to the Landlord's claim for \$2,271.46 to replace two hot water heaters, I find the Landlord is entitled to the relief sought. I find it is more likely than not that the damage to the hot water heaters was caused by the Tenant's failure to report a known leak in a timely manner. I also find the Landlord has provided sufficient documentary evidence to establish the value of the loss, and did what was reasonable to replace the heaters, which he testified could not be repaired. The Landlord is granted a monetary award in the amount of \$2,271.46.

With respect to the Landlord's claim for \$400.00 to have the Tenant's locks replaced, I find the Landlord is entitled to the relief sought. I find it is more likely than not that the Tenant requested that the locks be changed as described by the Landlord. Although no receipts were provided, I find the amount claimed to perform the work was reasonable in the circumstances and that the Landlord has sufficiently established the value of his loss. The Landlord is granted a monetary award in the amount of \$400.00.

With respect to the Landlord's claim for \$120.00 for court fees, I find the Landlord is entitled to the relief sought. I find these fees were incurred to give effect to an order of possession. I also find the Landlord has provided sufficient documentary evidence to establish the value of the loss, and did what was reasonable to give effect to an order of possession. The Landlord is granted a monetary award in the amount of \$120.00.

With respect to the Landlord's claim for \$1,550.00 for lost rent for the month of March 2018, I find the Landlord is entitled to the relief sought. The Landlord's affirmed testimony, which I accept, confirmed rent was not paid when due on March 1, 2018. However, the Tenant did not vacate the rental unit until March 15, 2018, and the Landlord was unable to re-rent the unit until several months later. The Landlord is granted a monetary award in the amount of \$1,550.00.

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 security deposit and pet damage deposit held be applied in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the Act, the Landlord is granted a monetary order in the amount of \$9,176.46, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Drywall and ceiling repairs/painting:	\$3,750.00
Drywall and ceiling repairs/painting:	\$735.00
Bailiff fees:	\$1,800.00
Replace hot water heaters:	\$2,271.46
Replace locks:	\$400.00
BC Supreme Court filing fee:	\$120.00
Rent (March 2018):	\$1,550.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$775.00)
<i>LESS</i> pet damage deposit:	(\$775.00)
<b>TOTAL:</b>	<b>\$9,176.46</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$9,176.46. 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: June 21, 2019

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Residential Tenancy Branch