



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNRL-S

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on February 14, 2019, wherein the Landlord sought monetary compensation from the Tenant, authority to retain her security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 10, 2019 and continued on August 9, 2019. On June 10, 2019 only the Landlord called into the hearing. She confirmed that she was unable to serve the Tenant with Notice of the Hearing. By Interim Decision dated June 10, 2019 I ordered that the Landlord be permitted to serve the Tenant by email. On the date the hearing reconvened the Landlord confirmed that she served the Tenant by email.

Both parties called into the hearing on August 9, 2019 and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began November 1, 2018. Monthly rent was \$1,950.00 and the Tenant paid a security deposit of \$975.00. A copy of the residential tenancy agreement was also provided in evidence which confirmed this information.

The Landlord testified that the Tenant gave the Landlord notice to end her tenancy on January 23, 2019 with a proposed effective date of January 31, 2019. The Tenant moved out on January 31, 2019.

The Landlord testified that she re-rented the rental unit on March 1, 2019 for \$1,950.00. The Landlord further testified that she immediately advertised the rental property; in support she provided documents which recorded approximately 12 different showings of the rental unit in early February 2019.

The Landlord also claimed the sum of \$145.60 for cleaning costs for cleaning the oven, the refrigerator and the window sills. She claimed that she provided photos of these items however, those photos were not provided in evidence. The Landlord also testified that the Tenant did not replace a couple of light bulbs.

In response the Tenant testified as follows. The Tenant confirmed that she allowed prospective tenants to see the rental unit as soon as she gave her notice.

The Tenant noted that on one of the documents provided by the Landlord, at least three of the prospective tenants requested to move in by February 15, 2019 such that she believes the rental unit could have been rented earlier.

In response to the Landlord's claim for cleaning costs the Tenant stated that when she moved in the rental unit was not cleaned. The Tenant stated that she cleaned the rental unit, paid for the cost of the replacement of the lightbulbs, and rented a ladder to clean the ceiling fan. The Tenant also confirmed that she disputed the Landlord's claim for cleaning noting that the Landlord failed to provide photos to support this claim.

In response to the Landlord's claims, the Tenant filed written submissions in which she submitted the following:

- she advised the Landlord she was laid off from her work as of December 2018 and has been unemployed since that date;
- she gave notice to end her tenancy on January 23, 2019;
- she allowed showings to occur while she was in occupation of the rental unit;
- she disputes the Landlord's claim for a full month's rent;
- the rental market in the city in which the rental unit is located is "competitive and thriving" and that it is very easy to find new tenants.
- many potential tenants were able to rent for February 2019;
- she disputes the Landlord's claim for cleaning costs noting that the rental unit was not clean when she moved in; and,
- she tried to resolve matters with the Landlord and therefore opposes her request to recover the filing fee.

During her testimony the Tenant noted that most of the prospective tenants wrote that they were able to move in February 1, or 15, 2019 such that the Landlord could have rented the unit sooner.

In reply the Landlord stated that although she showed the property to several people, none of the people who were willing to move in early put in an application for tenancy. The Landlord further stated that had someone put in an application to move in earlier, she would have rented it out sooner. She confirmed that only one person put in an application for tenancy, and that was the person she rented to.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Landlord claims loss of rent for the month of February 2019.

A tenancy may be ended provided it is done so in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The undisputed evidence was that the Tenant gave notice to end her tenancy on January 23, 2019. Although she indicated she would move out by January 31, 2019, the effective date of the notice was February 28, 2019 pursuant to section 45.

I accept the Landlord's evidence that upon receiving the Tenant's notice to end her tenancy, she immediately advertised the rental unit. The evidence confirms that she also showed the unit to several prospective tenants in the first week of February 2019. Although some of those prospective tenants indicated they would move into the rental unit earlier in February 2019, I accept the Landlord's testimony that none of those individuals put in an actual application to rent the rental unit. I accept her evidence that the earliest she could rent the rental unit was March 1, 2019 such that she lost rent for the month of February 2019.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find that the Landlord is entitled to monetary compensation for the loss of rent for February 2019 in the amount of **\$1,950.00**.

The Landlord also seeks monetary compensation for the cost to clean the rental unit.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord claimed the Tenant did not clean the rental unit as required. The Tenant disputes this claim. While the Landlord believed she submitted photos of the rental unit in evidence, those photos were not before me. As noted earlier, the claiming party (in this case, the Landlord) bears the burden of proving their claim on a balance of probabilities. Without further corroborating evidence I am unable to prefer the Landlord's testimony over the Tenant's. I therefore find the Landlord has failed to meet the burden of proving that the rental unit required cleaning at the end of the tenancy and I therefore dismiss this portion of her claim.

As the Landlord has been partially successful in her claim I award her recovery of the filing fee.

Conclusion

The Landlord's claim for monetary compensation for loss of rent in the amount of \$1,950.00 for the month of February 2019 and recovery of the \$100.00 filing fee is granted.

The Landlord's claim for cleaning costs is denied.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$975.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,075.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 12, 2019

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Residential Tenancy Branch