



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 6, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package was served on the Tenant by registered mail on May 8, 2019. The Tenant acknowledged receipt. The Tenant testified that he served the documentary evidence upon which he intends to rely on the Landlord by registered mail on May 22, 2019. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the fixed-term tenancy began on Marcy 15, 2018, and ended on March 31, 2019. Thereafter, the tenancy continued on a month-to-month basis. During the fixed term, rent in the amount of \$2,450.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,225.00, which the Landlord holds.

The Landlord's claims are set out on a Monetary Order Worksheet, dated May 3, 2019. The claims were supported by a Condition Inspection Report. The move-in condition inspection, completed on March 13, 2018, and signed by the Tenant, discloses no issues with carpeting or a kitchen cabinet door at the beginning of the tenancy. Although asked to participate in a move-out condition inspection in an email dated April 29, 2019, the Tenant did not attend.

First, the Landlord claims \$101.20 to clean the carpets at the end of the tenancy. In support, the Landlord submitted several before and after photographs of the carpeting. She testified that the carpeting was "clean and nice" at the beginning of the tenancy, but was "very, very dirty" at the end of the tenancy. The images include pictures of carpeting in bedrooms and on stairs.

In response, the Tenant testified that he used the Landlord's carpet cleaner but that the Landlord was not happy with the result.

Second, the Landlord claims \$980.00 to install carpet in the upper northwest bedroom. The Landlord submitted several before and after photographs of the carpet. She testified to her belief that the damage depicted was caused by a rolling chair placed directly on the carpet. The Landlord also submitted a hand-written estimate, on letterhead, in the amount claimed. However, the Landlord acknowledged that the carpet has not yet been replaced.

In response, the Tenant acknowledged that a chair caused the damage but testified that he believes the damage is normal wear and tear.

Third, the Landlord claims \$20.57 for materials needed to repair a broken kitchen cabinet door. She testified that she purchased the materials and that her husband performed the repair. A Home Depot receipt for a hinge and anchors, dated April 23, 2019, was submitted in support.

In reply, the Tenant testified the screw no longer fit in the hole. He acknowledged that he tried to repair the cabinet with wire.

Finally, the Landlord claims \$2,511.25 for unpaid rent due on May 1, 2019. The Landlord testified the fixed-term tenancy, which ended on March 31, 2019, reverted to a month-to-month tenancy effective April 1, 2019. In support of the amount of rent claimed, the Landlord submitted a Notice of Rent Increase, dated January 3, 2019, which the Landlord testified was served on the Tenant by regular mail. The rent increase was effective May 1, 2019. However, the Tenant provided written notice to end the tenancy by text message on April 2, 2019, and vacated the rental unit on April 22, 2019. A translated copy of the text message from the Tenant was submitted into evidence.

In response, the Tenant testified that his family circumstances changed and that they had to move to more appropriate housing. He acknowledged he gave the Landlord notice in writing on April 2, 2019, but advised that he moved out on April 18, 2019. The Tenant testified that he did not receive the Notice in the mail, and the Landlord agreed to accept the amount of rent due under the terms of the fixed-term agreement.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

### Analysis

Based on the 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 \$101.20 to clean the carpets at the end of the tenancy, I find the Landlord has established an entitlement to the amount sought. The move-in condition inspection and photographs submitted indicate the carpets were clean at the beginning of the tenancy. The photographs submitted further indicated the carpet was not clean at the end of the tenancy, despite the Tenant's efforts to do so. Further, I find that the amount claimed is reasonable in the circumstances. The Landlord is granted a monetary award in the amount of \$101.20.

With respect to the Landlord's claim for \$980.00 for new carpet in the upper northwest bedroom, I find the Landlord is not entitled to the amount sought. More than 3-1/2 months have passed since the Tenant vacated the rental unit and the Landlord has not yet replaced the carpet. As a result, I find the Landlord has not demonstrated that she has incurred a loss. However, Policy Guideline #16 confirms an arbitrator may award nominal damages when 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. In this case, I am satisfied that the carpet was damaged by the Tenant or his family during the tenancy. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$100.00.

With respect to the Landlord's claim for \$20.57 for materials needed to repair a broken kitchen cabinet door, I find the Landlord has demonstrated an entitlement to the amount sought. The move-in condition inspection did not indicate any damage to the kitchen cabinets. Further, although a photograph of the cabinet was not submitted into evidence, the Landlord demonstrated the value of the loss and provided plausible explanation for the need for the repair. Finally, the Tenant did not dispute that the damage occurred during the tenancy and testified that he tried to repair the cabinet with wire. I find the Landlord is entitled to a monetary award in the amount of \$20.57.

With respect to the Landlord's claim for \$2,511.25 for unpaid rent, section 45(1) of the *Act* confirms that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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. In other words, in the case of a month-to-month tenancy, written notice given in any month is effective on the last day of the following month. Further, section 26(1) of the *Act* confirms that a tenant must pay rent when due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation, or the tenancy agreement.

In this case, I find the fixed-term tenancy reverted to a month-to-month tenancy on April 1, 2019. I also find the Tenant provided written notice of his intention to end the tenancy on April 2, 2019, and vacated the rental unit on or about April 22, 2019, contrary to section 45(1) of the *Act*. As a result, the Tenant's notice was ineffective to end the tenancy before May 31, 2019. Therefore, I find that rent was not paid when due on May 1, 2019, and find the Landlord is entitled to an award for unpaid rent. However, I find there is insufficient evidence before me to confirm the Tenant was served with and received the Notice. Therefore, I find it is more likely than not that the rent due under the fixed term tenancy agreement remained due. The Landlord is granted a monetary award in the amount of \$2,450.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,446.77, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Carpet cleaning:	\$101.20
Nominal damages (carpet):	\$100.00
Cabinet repair:	\$20.57
Unpaid rent (May 2019):	\$2,450.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,225.00)
<b>TOTAL:</b>	<b>\$1,546.77</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$1,546.77. 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: August 13, 2019

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Residential Tenancy Branch