



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC MNR MNSD FF
	Tenant:	MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on June 14, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application was made on August 13, 2019 (the Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenant attended the hearing on her own behalf. The Tenant was accompanied by E.R. and E.R., observers, and J.W. and C.H., witnesses. The Landlord, the Tenant, and C.H. provided affirmed testimony.

The Landlord testified that the Landlord’s Application package and two subsequent evidence packages were served on the Tenant by registered mail. The Tenant acknowledged receipt of the Application package and the second evidence package. The Tenant denied receipt of the

first evidence package. It was sent to the Tenant's forwarding address but was returned by the occupant of that address. However, the Tenant confirmed she was prepared to proceed with the hearing.

The Tenant submitted documentary evidence in response to the Landlord's Application. The Tenant testified it was served on the Landlord by registered mail. The Landlord acknowledged receipt.

The Tenant testified that the Tenant's Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord did not submit documentary evidence in response to the Tenant's Application.

Neither party raised any further issues with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance and were prepared to proceed. 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 the opportunity to present their 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. 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 compensation for damage to the unit, site or property?
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 or utilities?
4. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
7. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
8. Is the Tenant entitled to an order granting recovery of the filing fee?

#### Background and Evidence

The parties agreed the Tenant rented a room in the rental unit and shared common areas with other individuals under separate tenancy agreements. The other tenants and the Landlord have

made almost identical claims against each other and the file numbers of the related proceedings are included above for ease of reference.

This tenancy began on or about January 1, 2019. The Tenant testified she provided the Landlord with written notice to end the tenancy that was to be effective May 31, 2019, but that she moved out on May 26, 2019. During the tenancy, rent in the amount of \$675.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$337.50, which the Landlord holds.

#### The Landlord's Claim

The Landlord's monetary claim was summarized in the Landlord's Application. First, the Landlord claimed \$150.00 to clean the rental unit. The Landlord testified the amount claimed was based on his estimate of 6 hours of cleaning at \$25.00 per hour and reflects only the Tenant's portion of the cleaning expense.

The Landlord testified the primary areas of concern included the door frame and window pane to the Tenant's bedroom. The Landlord also submitted photographs of the common areas of the rental unit. These depict the interior of the freezer, the floor behind and under the freezer, a stove, a bathtub, and the floor. The Landlord stated the photographs confirm these areas were not cleaned at the end of the tenancy. The Landlord testified that he has done some but not all of the required cleaning and that the amount claimed is likely an underestimate.

In reply, the Tenant testified that the Landlord did not complete a condition inspection report at the beginning of the tenancy. The Tenant also testified the rental unit was cleaned “pretty thoroughly” before she moved out. In support, the Tenant referred to 15 photographs submitted into evidence. These include images of the kitchen, cupboards and drawers, the Tenant’s bedroom, the interior of the fridge, living room, shower, and the den. The Tenant noted there were no receipts submitted by the Landlord.

Second, the Landlord claimed \$1,000.00 for lost rent for the month of June 2019. The Landlord testified he had an individual lined up to rent the 4<sup>th</sup> bedroom in the rental unit for \$800.00 per month. However, he lost the potential tenant when the Tenant and other occupants refused to consent to the Landlord entering the rental unit. The Landlord was unable to recall how the remainder of this aspect of the claim was determined.

In reply, the Tenant conceded that she and the other occupants of the rental unit did not give their consent to the Landlord to enter the rental unit. The Tenant testified the refusal arose in response to an incident on May 12, 2019 during which the Landlord exhibited extreme aggression and abusive behavior. A recording of an exchange on May 12, 2019 was submitted into evidence. In it, the Landlord is heard to state:

*No, it's not the way it's gonna be, okay? It's not. Okay? This is it, okay? I've fuckin' had it with you, okay? All of you, and especially you [Tenant] because I trusted you on bringing these two other people into the house. So look, this is what I've got. I've contacted the house- the building, the whatever, the tenancy thing here and he says I can give you one month's notice, okay? I also have all these unpaid utilities, which I haven't paid - charged you guys. Here's the water one, I think it's like 500 bucks, I have to do divide it out. Okay? It's water, it's utility you have to pay for it? And we can go down this road, here. I've just fuckin' had it with you. So, look, just like when you arrived, this is past the point, get the fuck out of the house, I don't care when you do it. You got 24 hours...Get the fuck out, okay? I've fucking had it...Go fuck yourself!*

The Tenant also relied on a text message from the Landlord, dated May 13, 2019, in which the Landlord wrote: “What is clear is you are going to leave. This is a fact. The only issue now is when?”

However, the Tenant testified there was really nothing she could have done to prevent the Landlord from entering the rental unit and showing it to the prospective tenant. In addition, the Tenant testified it was always her understanding that there would be only 3 roommates in the rental unit.

Third, the Landlord claimed \$675.00 for unpaid rent due on June 1, 2019.

In reply, the Tenant agreed rent was not paid when due on June 1, 2019. She testified the Landlord was given written notice of her intention to vacate the rental unit on May 26, 2019. A copy of the notice was submitted into evidence. The notice was to be effective May 31, 2019. The Tenant testified that notice was given to the Landlord in response to an alleged breach of a material term of the tenancy agreement and a loss of quiet enjoyment. Specifically, the Tenant testified that the Landlord's behaviour on May 12, 2019 resulted in the notice to end tenancy.

In response to the Tenant's evidence, the Landlord stated the parties had met to discuss when the Tenant would vacate the rental unit but that she changed her mind. In the audio recording, the Landlord also seems upset that the Tenant was accompanied by a third party.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Tenant's Application, and requested an order permitting him to retain the security deposit held in partial satisfaction of the Landlord's claim.

#### The Tenant's Claim

The Tenant's claim was summarized in the Tenant's Application and elaborated upon during the hearing. First, the Tenant claimed \$1,650.00. The first aspect of this claim included \$675.00 for a refund of rent as compensation under section 51 of the *Act*. She testified the Landlord intended to complete renovations to the rental unit. The Tenant's understanding of the renovations was summarized in a text message to the Landlord on May 7, 2019, attached as Exhibit "D" to the Affidavit of C.H. Renovations included "the addition of a staircase between the bottom and first floor, plumbing work, and new radiators." Despite her efforts to get the Landlord to issue a notice to end tenancy in the correct form, the parties agreed he did not.

The second aspect of this claim included \$675.00 for loss of quiet enjoyment. The Tenant referred to 2 letters to the Landlord dated May 13, 2019, attached as Exhibit "M" and "N" to the Affidavit of C.H. The first letter describes the Landlord's "inappropriate, unprofessional, and unacceptable behaviour" on May 12, 2019, and indicated the Landlord made similar comments on May 13, 2019. The second letter suggests the Tenant received "illegal" eviction notices on April 15 and May 12, 2019. However, as noted above, the parties acknowledge that a notice to end tenancy in the proper form had not been issued.

In addition, the Tenant relied on the testimony of C.H. who testified that she witnessed the Tenant experience anxiety, difficulty concentrating, migraine headaches, distress, and crying as a result of the Landlord's behaviours.

The third aspect of this claim included \$300.00 in "nominal damages" because the Landlord changed the locks on May 28, 2019, pressured the Tenant to move out, and caused mental and physical stress.

Second, the Tenant claimed \$675.00, which is double the amount of the security deposit held by the Landlord. The Tenant testified she provided the Landlord with her forwarding address in writing by regular mail on June 1, 2019. A copy of the letter was submitted into evidence.

In reply, the Landlord acknowledged that he received the Tenant's forwarding address.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Tenant's Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

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 because 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 each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

#### The Landlord's Claim

With respect to the Landlord's claim for \$150.00 for the Tenant's portion of cleaning required at the end of the tenancy, section 37(2) of the *Act* confirms that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In this case, I find there is insufficient evidence before me to grant the relief sought. While I accept that some cleaning was required at the end of the tenancy, I am not satisfied this was beyond reasonable wear and tear permitted under the *Act*. Significantly, the Landlord acknowledged that the cleaning has not been completed more than 4 months after the tenancy ended and that he was relying only on his estimate for how much time cleaning would take. Therefore, I find the Landlord has not established that he suffered any loss or the value of his loss on a balance of probabilities. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,000.00 for lost rent, I find there is insufficient evidence before me to grant the relief sought. While I accept that the Tenant did not give her consent to the Landlord to enter the rental unit, I accept there was little the Tenant could have done to prevent the Landlord from accessing the rental unit in accordance with section 29 of the *Act*. In addition, I find there is insufficient evidence before me to conclude the prospective tenant would have rented the fourth bedroom, or the amount of the rent that would have been paid. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$675.00 for unpaid rent due on June 1, 2019, section 45 of the *Act* confirms a tenant may end a periodic tenancy by giving notice that is effective on a date that is not earlier than one month after the date the landlord received the notice and is the day before the day in the month that rent is payable. Accordingly, the Tenant's notice, received by the Landlord on May 26, 2019, was effective to end the tenancy on June 30, 2019. As a result, rent came due on June 1, 2019. I do not accept the Tenant's submission that the Landlord's behaviour was sufficient to end the tenancy early. Although the Landlord's comments and tone were inappropriate and not in accordance with the *Act*, they were not sufficient to end the tenancy. If the Landlord's requests were sufficient to cause the Tenant to question whether or not the tenancy was ending, she could have obtained a decision from the Residential Tenancy Branch concerning the effectiveness of the Landlord's requests by making an application for dispute resolution. She did not. Therefore, I find rent was not paid when due on June 1, 2019 and the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$675.00.

I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$675.00. However, for the reasons provided below, I find it appropriate to order that the Landlord may retain the security deposit held in partial satisfaction of the Landlord's claim. Therefore, the Tenant owes the Landlord a further \$337.50 (\$675.00 - \$337.50).

#### The Tenant's Claim

With respect to the Tenant's claim for \$675.00 as a refund of rent paid on May 1, 2019, section 51 of the *Act* provides compensation for tenants who received a notice to end tenancy for landlord's use of property. Landlord's use can include renovations. However, a landlord's obligation to pay compensation arises only when a notice is issued under section 49 of the *Act*. It does not arise based on a tenant's belief the landlord should have issued a notice under section 49 of the *Act*. The parties agreed that a notice in the proper form was not issued by the Landlord. Therefore, I find that this aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$675.00 for loss of quiet enjoyment, section 28 of the *Act* confirms a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. Policy Guideline #6 states:



*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

[Reproduced as written.]

In this case, I am not satisfied that the Landlord's behaviour on May 12, 2019 was sufficient to give rise to an unreasonable disturbance. That is, the evidence does not support the frequent and ongoing nature of the Landlord's behaviour. However, Policy Guideline #16 permits an award of 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 find the Landlord's conduct on May 12, 2019 was a breach of the *Act* and that the Tenant is entitled to nominal damages in the amount of \$150.00.

With respect to the Tenant's claim for \$300.00 which she characterized as "nominal damages", I find there is insufficient evidence before me to grant the relief sought. I find the Tenant has already been compensated with an award of nominal damages for the Landlord's conduct on May 12, 2019. Further, the Tenant testified she had moved out before locks were changed. Therefore, I find that this aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for the return of \$675.00 or double the amount of the security deposit, section 38(1) confirms that a landlord must repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenant provided the Landlord with her forwarding address in writing in a letter dated June 1, 2019. The Tenant testified, and I accept that the letter was mailed to the Landlord on that date. Pursuant to section 88 of the *Act*, documents sent by regular mail are deemed to be received 5 days later. Therefore, I find the Landlord is deemed to have received the Tenant's forwarding address on June 6, 2019. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days – until June 21, 2019, to pay the security deposit to the Tenant or make a claim against it by applying for dispute resolution. I find the Landlord made the Landlord's Application in time on June 14, 2019. Therefore, I find the Tenant is not entitled to recover double the amount of the security deposit held by the Landlord. In light of my order with respect to the security deposit described above, this aspect of the Tenant's Application is dismissed.

I find the Tenant has demonstrated an entitlement to a monetary award in the amount of \$150.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$675.00. Deducting the security deposit held, the Landlord is entitled to recover from the Tenant a further \$337.50. In addition, the Tenant has demonstrated an entitlement to a monetary award in the amount of \$150.00. Setting off the claims, I find the Landlord is entitled to a monetary award in the amount of \$187.50. As both parties have had some success, I decline to grant recovery of the filing fee paid to either party.

Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$187.50. 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: October 23, 2019

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Residential Tenancy Branch