



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On July 24, 2019, the Landlord applied seeking a monetary order for unpaid rent; damage to the rental unit; and to keep all or part of the security deposit.

On May 22, 2019, the Tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. The Tenant was assisted by an advocate. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they had exchanged the documentary evidence that I have before 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

- Is the Landlord entitled to a monetary order due to damage to the rental unit?
- Is the Landlord entitled to a monetary order due to unpaid rent?
- Is the Landlord entitled to keep the security deposit?
- Is the Tenant entitled to a monetary order due to money owed or compensation for damage or loss?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2011, on a month to month basis. Rent in the amount of \$320.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$160.00 to the Landlord.

The Landlord testified that the Tenant abandoned the rental unit on November 1, 2018. The Tenant testified that he moved out of the rental unit on November 1, 2018.

### Tenant's Application

The Tenant is seeking compensation in the amount of \$630.00 for lost belongings due to being locked out of the rental unit.

The Tenant testified that the Landlord asked him to leave on November 1, 2019, so he left and stayed with a friend. The Tenant testified that the Landlord served him with the order of possession document. The Tenant testified that he could not take his possessions because he had no place to put it. The Tenant testified that he returned to the unit to find that the locks were changed, and he could not retrieve his possessions.

The Tenant testified that friends attended the rental property and retrieved his clothing on November 8, 2019.

The Tenant testified that he is missing the following items and assigned the following monetary value:

- Electric Cigarette \$100.00      1 year old
- Birth Certificate \$40.00
- Work Boots \$100.00              6 years old
- Hiking Boots \$50.00              new condition
- Wool Jacket \$100.00              gifted to him from a friend
- Table/ Cabinet \$100.00          purchased from thrift store
- Family Photographs \$100.00 sentimental value
- Umbrella \$40.00                  gifted to him from a friend

The Tenant did not provide any photographic evidence in support of his testimony regarding the items and did not provide a quote for the replacement cost of the items. The Tenant testified that he probably will not replace the items.

The Landlord testified that the Landlord and Tenant were involved in an earlier dispute resolution hearing on the Landlords application for an early end of tenancy. The tenancy was ended by an Arbitrator. The Landlord provided a copy of the Arbitrators Decision. The Decision indicates that the condition of the rental unit has potentially reached a health and safety issue and there is permanent damage to the rental unit. On October 15, 2018 the Landlord was granted an order of possession for the rental unit, with an effective date of October 31, 2018.

The Landlord testified that they served the Tenant with the order of possession and gave him a couple of weeks before he willingly gave up the unit and left on November 1, 2018. The Landlord testified that they secured the rental unit and the Tenant's possessions by changing the lock and gave the Tenant an opportunity to retrieve his items. The Landlord submitted that since the Tenant willingly left the rental unit, the Landlord did not need to pursue a writ of possession.

The Landlord testified that the Tenant was not barred from the property and had access to enter because he still had keys to the front door of the building. The Landlord submitted that during the tenancy the Tenant left his unit door unlocked and often left the door open. The Landlord testified that they repeatedly encouraged and reminded the Tenant to put a lock on his storage locker.

The Landlord testified that when the Tenant left the rental unit it on November 1, 2018 the unit was left extremely unclean and items were left behind in the unit. The Landlord declared it abandoned and put up a notice on the door. The Landlord testified that the Tenant could have contacted the Landlord to retrieve items. The Landlord provided a photograph of a notice left on the door providing information on how to retrieve possessions.

The Landlord testified that the lock to the Tenants rental unit was changed on November 1, 2018, and no person had access into that room from November 1 to November 5<sup>th</sup>, 2018.

The Landlord testified that on November 5, 2018, the Landlord moved all of the Tenant's possessions into a storage locker and put a lock on the locker door. The Landlord testified that he did not see any of the items that the Tenant has included in his claim for claim for compensation. The Landlord testified they took photographs of the rental unit and the Landlord provided photographs of the rental unit in their evidence.

The Landlord testified that the Tenant attended the rental property on November 8, 2019 and retrieved a few items from his locker and gave the Landlord permission to dispose of the remaining items.

The Tenant testified that when he went to retrieve items, he could not recall whether or not he told the Landlord to dispose of the items remaining in the storage locker. The Tenant stated that he could not take the items with him.

### Aggravated Damages

The Tenant is seeking compensation in the amount of \$2,500.00 for intangible losses due to the locks being changed and loss of access to the rental unit.

The Tenant testified that between November 1, 2018 and mid February 2019 he went to live with a friend Ms. C.S. and he also occasionally slept outside on cement or stayed in shelters.

The Tenant's advocate submitted that the Landlord had no right to change the locks and remove the Tenant's items. The Tenant's advocate submitted that the Landlord did not comply with the requirements for abandonment.

### Landlord's Application

The Landlord provided a monetary order worksheet claiming compensation for the following items:

Rent Arrears	\$24.00
Cleaning	\$900.00
Hauling	\$556.50
Fridge	\$687.86
Sink	\$139.04
Smoke Detector	\$60.00
Bifold doors	\$175.05
Blinds	\$142.08
Laundry Card	\$5.00
Keys	\$70.00

### Rent

The Landlord testified that the Tenant owed rent in the amount of \$961.00 and only paid \$937.00 towards the amount owing. The Landlord is seeking compensation in the amount of \$24.00.

In reply, the Tenant acknowledged responsibility for the amount owing.

#### Suite Cleaning

The Landlord, Mr. M.D. testified that it took him 30 hours to clean the rental unit. The Landlord testified that the Tenant was incontinent, and the rental unit required a bio clean. The Landlord provided 16 color photographs taken of the unit at the end of the tenancy.

In reply, the Tenants advocate submitted that the Tenant was prepared to clean the unit; however, the Landlord prevented this by locking the Tenant out of the unit. The Tenant's advocate does not dispute that the Landlord had to clean the unit.

#### Hauling

The Landlord testified that they hired a company to tear out the carpet and dispose of it along with a half load of garbage from within the rental unit. The Landlord provided photographs of the rental unit and a receipt dated November 8, 2019 in the amount of \$556.50 for the cost of hauling.

The Tenant replied that the Landlord locked him out. The Tenant testified that he wanted to hire a friend with a steam cleaner, but he could not get into the unit.

The Landlord replied that the carpet was damaged and burned.

#### Fridge

The Landlord is seeking to recover the amount of \$687.86 to purchase a new refrigerator. The Landlord testified that the door handle was ripped off; the gasket seal was torn; and the fridge was rusty. The Landlord testified that it would cost more to repair the refrigerator than to buy a new one. The Landlord testified that the refrigerator was approximately four years old. The Landlord referenced the condition inspection report which indicates the fridge was brand new at the start of the tenancy.

In reply, the Tenant testified that the fridge worked fine. The Tenant did not recall that the handle had broken off.

#### Bathroom Sink

The Landlord is seeking to recover the amount of \$139.00 to purchase a new sink. The Landlord testified that the gasket had been torn out and the ceramic coating was damaged and worn through. The Landlord testified that the sink may have been 10 years old.

In reply, the Tenant testified that he was not aware of any damage to the sink.

#### Smoke Detector

The Landlord testified that a smoke detector was missing from the rental unit. The Landlord replaced the smoke detector and is seeking to recover the replacement cost of \$60.00.

In reply, the Tenant testified that he removed the smoke detector from the area above the bathroom door and left it in a common area outside of the rental unit. The Tenant could not recall whether he mentioned his removal of the smoke detector to the Landlord.

#### Bifold Doors

The Landlord testified that the bifold doors were found to be badly damaged. The Landlord testified that the pins at the top and bottom of the doors were missing. The Landlord replaced both bifold doors and is seeking the amount of \$175.00 for replacement cost.

In replay, the Tenant testified that he moved the bifold door to a smaller closet. He testified that the bolts came undone.

#### Blinds \$142.00

The Landlord testified that they found that the post within a vertical blind was broken and the blinds would not swivel or turn. The Landlord testified that the blinds were also dirty with smoke damage and could not be cleaned. The Landlord testified that the blinds were brand new at the start of the tenancy. The Landlord referenced the

condition inspection report which indicates the blinds were brand new at the start of the tenancy.

The Tenant testified that the blinds did not operate properly from day one.

#### Laundry Card

The Landlord testified that the Tenant failed to return a laundry card at the end of the tenancy. The Landlord testified that the replacement cost for the card is \$5.00.

The Tenant had no response to this claim.

#### Keys

The Landlord testified that the Tenant lost his keys to the building and rental unit and was provided a replacement set on July 11, 2019. The Landlord testified that the Tenant never paid the replacement cost of \$70.00.

The Landlord provided a copy of a document titled Building and Suite Key Policy that provides the tenant must pay for any replacement keys. The document that is signed by the Tenant provides that the Tenant was provided a front door; suite; and mail key on July 11, 2019. The document indicates that the amount of \$70.00 is to be billed to the Tenant.

In reply, the Tenant acknowledged that he lost his keys and that the Landlord gave him a set. The Tenant testified that he put the keys in the mail slot of the office door.

The Landlord testified that they have no record of the Tenant returning the keys.

#### Security Deposit

The Landlord is seeking to keep the security deposit of \$160.00 in partial satisfaction of the claims.

#### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

*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. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Section 24 of the Residential Tenancy Regulation provides that a landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
  - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
  - (ii) from which the tenant has removed substantially all of his or her personal property.

The Landlord has obligations under section 25 of the Residential Tenancy Regulation with respect to the safe storage and disposal of personal property that is left in a rental unit.

Section 44 of the Act provides that the tenancy ends if the Tenant vacates or abandons the rental unit.

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

#### Tenant's Application

I find that there was an order for the tenancy to end on October 31, 2019 and the Landlord served the Tenant with the Order of Possession for the rental unit at some point prior to October 31, 2019.

I find that this is not a situation where the Tenant, after receiving an order of possession, was refusing to vacate the rental unit, which would present a situation where the Landlord would require a writ of possession from the Courts. The Tenant knew the tenancy was over and left to go stay with friends. I find that the Landlord had the legal right to change the locks to the rental unit; to consider the Tenant's possessions as abandoned; and to remove the possessions in accordance with the Regulations. I find that the Landlord secured the Tenants possessions on November 1, 2019 and moved them to a secure storage locker on November 5, 2019.

#### Loss of Belongings

The Tenant bears the burden of proof on his claim for the replacement of personal possessions. I accept the Landlord's testimony that the Landlord changed the locks to the unit on November 1, 2019 and that the Tenant's possessions were secured and transferred to a locked storage locker a few days later. The Landlords testified that they did not see any of the items that the Tenant is claiming. The only photographic evidence before me was provided by the Landlord and upon review of the photographs taken in September 2018; I find that the photographic evidence does not show any of the items being claimed by the Tenant. I am mindful that the Landlord mentioned that the tenant left his unit door unlocked and open. The Tenant did not refute the Landlords statement. The Tenant testified that he told the Landlord that he could not take items with him and could not recall whether or not he told the Landlord to dispose of the items remaining in the storage locker.

In order for the Tenant's claim to be successful, the Tenant must prove that the loss exists; that the loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement; and provide proof of the actual amount required to compensate for the claimed loss.

I find that there is insufficient evidence from the Tenant to prove the loss of the personal items, and that the loss occurred due to a breach on the part of the Landlord. In addition, the Tenant did not provide sufficient proof of the actual amount required for the loss.

The Tenant's claim for compensation for a loss of personal items is dismissed.

#### Aggravated Damages

The Tenant's claim for aggravated damages due to intangible losses resulting from being locked out of the rental unit are dismissed. As provided above, I find that the Landlord had the legal right to change the locks to the rental unit; to consider the Tenant's possessions as abandoned; and to remove and secure the possessions in accordance with the Regulations.

I find that the Landlord did not breach the Act, Regulation or tenancy agreement. The Tenant's claim for aggravated damages is dismissed.

#### Landlord's Application

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

#### Rent Arrears \$24.00

The Tenant acknowledged responsibility for the amount of outstanding rent.

I award the Landlord the amount of \$24.00.

#### Cleaning \$900.00

I have considered the evidence before me that the Landlord was successful with their application for an early end of tenancy due to a finding by an Arbitrator that the condition of the rental unit has potentially reached a health and safety issue and there was permanent damage to the rental unit.

I give the Tenant's submission that he was locked out and did not have an opportunity to clean the rental unit very little weight. The Tenant testified that he left to go stay with friends. I find the Tenant's statement that he planned to return and clean the carpet with a steam cleaner to be unconvincing. I accept the Landlord's photographic evidence showing the carpet was beyond cleaning; which is supported by the earlier Decision that the unit was filthy, and cigarettes were burned out on the floor and cigarettes were ground into the carpet. I find that it is not reasonable to accept that cleaning the carpet would have made any difference in its condition or the overall condition of the rental unit.

I have reviewed the Landlord's photographic evidence showing the condition and state of repair of the rental unit. I find that the Tenant left the rental unit in an extremely poor and damaged condition, and I find that the Tenant is responsible for the cleaning costs incurred by the Landlord.

I award the Landlord the amount of \$900.00 for the time it took clean/ bio clean the unit.

#### Hauling \$556.50

As provided above, I find that the Tenant left the rental unit in an extremely poor and damaged condition. The Landlord's photographs show there was a large amount of garbage and damage left in the unit.

I do not accept the explanation from the Tenant that the rental unit was left dirty because the Tenant was locked out and did not have an opportunity to clean the unit.

I award the Landlord the amount of \$556.00 for the cost to dispose of garbage and damaged items within the rental unit.

#### Fridge \$687.86

The Landlord testified that the condition of the fridge was so poor that it needed to be replaced. The Landlord provided a copy of a condition inspection report signed by the Tenant at the start of the tenancy that indicates the fridge was new. The condition inspection report completed on October 31, 2019, indicates that the fridge is destroyed. The Landlord's photograph of the exterior of the fridge in 2017 shows the exterior of the fridge to be extremely filthy. The Tenant testified that the fridge worked fine but did not address whether it was left damaged other than stating that the handle was intact.

Based on the evidence before me, and with consideration to the rental unit which I find was left in an extremely dirty condition, I find that the Landlord has provided the stronger evidence that the fridge needed to be replaced. I find that it is more likely than not that the Tenant is responsible for damage to the fridge.

I have considered the age of the refrigerator. I find that the refrigerator was new in August 2011 and was 7 years old at the end of the tenancy. The policy guideline provides that the useful life of a fridge is 15 years. I find that the Tenant is responsible for 8/15 of the replacement cost of the fridge. ( $\$687.86 / 15 = \$45.85 \times 8 = \$366.80$ ).

I award the Landlord the amount of \$366.80 for the replacement cost of the refrigerator.

#### Sink \$139.04

The Landlord provided a copy of a condition inspection report signed by the Tenant at the start of the tenancy that indicates the bathroom satisfactory. The condition inspection report completed on October 31, 2019, indicates that the bathroom needed cleaning and was stained. The Landlord provided a photograph of the sink from 2017 that shows the sink was unclean and stained.

I have considered the age of the sink. I find that the sink was new in August 2011 and was 7 years old at the end of the tenancy. The policy guideline provides that the useful life of a sink is 20 years. I find that the Tenant is responsible for 13/20 of the replacement cost of the sink. ( $\$139.04 / 20 = \$6.95 \times 13 = \$90.35$ )

I award the Landlord the amount of \$90.35 for the cost of the sink.

#### Smoke Detector \$60.00

I accept the Tenant's testimony that the Tenant removed the smoke detector from the ceiling of the rental unit and placed it in a common area. Since the Tenant did not maintain possession of the smoke detector, I find that the Tenant is responsible for the cost to replace the smoke detector.

I award the Landlord the amount of \$60.00 for the cost of a replacement smoke detector.

#### Bifold Doors \$175.05

I accept the Tenants testimony that he removed the bifold doors and moved them to a different area of the rental unit.

I have considered the age of the doors. I find that the doors were in new condition in August 2011 and were 7 years old at the end of the tenancy. The policy guideline provides that the useful life of doors is 20 years. I find that the Tenant is responsible for 13/20 of the replacement cost of the doors. ( $\$175.05 / 20 = \$8.75 \times 13 = \$113.75$ )

I award the Landlord the amount of \$113.75 for the cost of the bifold doors.

#### Blinds \$142.08

The Landlord testified that the blinds were found to be broken and could not be cleaned due to smoke damage. The Landlord provided a copy of a condition inspection report signed by the Tenant at the start of the tenancy that indicates that blinds/ curtains in the entry and hall and kitchen were new at the start of the tenancy. The condition inspection report completed on October 31, 2019, indicates that the blinds were missing and damaged.

The Tenant testified that the blinds did not operate from day one.

I find that the Landlord provided the better evidence that the blinds were new at the start of the tenancy and that the blinds were left damaged and smoke damaged at the end of the tenancy.

I have considered the age of the blinds. I find that the blinds were new in August 2011 and were 7 years old at the end of the tenancy. The policy guideline provides that the useful life of blinds is 10 years. I find that the Tenant is responsible for 3/10 of the replacement cost of the blinds. ( $\$142 / 10 = \$14.20 \times 3 = \$42.60$ .)

I award the Landlord the amount of \$42.60. for the cost of blinds.

#### Laundry Card \$5.00

The Tenant chose to provide no response to the Landlords claim that the Tenant failed to return a laundry card that has a replacement cost of \$5.00.

I find that the Tenant failed to return a laundry card and is responsible for the replacement cost of \$5.00.

Keys \$70.00

The parties provided testimony that is in agreement that the Tenant lost his keys and was provided with a replacement set in July 2018 by the Landlord.

The Landlords claim is for the replacement cost of the keys that were provided to the Tenant in July 2018. I find that the Tenant lost his keys and was provided a new set and was required to pay for the replacement cost.

I accept the Landlords testimony and evidence that the Tenant never paid the amount of \$70.00 that was billed to him for the replacement of the lost keys.

I award the Landlord the amount of \$70.00.

Security Deposit

The Landlord applied to keep the security deposit of \$160.00 towards their claims.

The Landlord was successful on their claims and is awarded the amount of \$2,228.50 for unpaid rent; cleaning costs; and repair costs to the rental unit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with their claims, I order the Tenant to pay the cost of the \$100.00 filing fee.

After setting off the security deposit of \$160.00 from the award of \$2,328.50, I find that the Tenant owes the Landlord the balance of \$2,168.50.

I grant the Landlord a monetary order in the amount of \$2,168.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant was not successful with his claim for compensation for a loss of personal items and for aggravated damages.

The Landlord established that the Tenant is responsible to compensate the Landlord for unpaid rent; and cleaning and repair costs to the rental unit. The Landlord established a monetary award in the amount of \$2,328.50.

After setting off the security deposit of \$160.00 from the award of \$2,328.50, I find that the Tenant owes the Landlord the balance of \$2,168.50.

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: December 04, 2019

---

Residential Tenancy Branch