



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's lawyer and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's lawyer confirmed that she had permission to represent the landlord at this hearing. This hearing lasted approximately 79 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord's amendment to the application. The landlord's lawyer confirmed receipt of the tenant's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and amendment and the landlord was duly served with the tenant's evidence package.

The landlord's lawyer and the tenant both confirmed that they were ready to proceed with the hearing and they had no objections to the application, amendment or evidence submitted.

## Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

### *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the tenant interrupted me, talked at the same time as me, argued with me, and yelled at me. The hearing took longer because of the tenant's disruptive behaviour. I cautioned the tenant multiple times to stop yelling at me and interrupting me, but he continued with this behaviour. However, I allowed the tenant to attend the full hearing, despite his disruptive behaviour, in order to provide him with a fair opportunity to respond to the landlord's application.

I caution the tenant to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and he may be excluded from future hearings. In that event, a decision will be made in the absence of the tenant.

## Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

## Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2019 and ended on September 11, 2019. Monthly rent in the amount of \$5,500.00 was payable on the first day of each month. A security deposit of \$2,750.00 and a pet damage deposit of \$2,750.00 were paid by the tenant and the landlord continues to retain both deposits. No written permission was given by the tenant to the landlord to keep any part of his deposits. The tenant provided a written forwarding address to the landlord by email on November 15, 2019. An application to retain the tenant's deposits was made by the landlord on August 12, 2019.

The landlord's lawyer claimed that both parties signed a written tenancy agreement and provided a copy of same. The tenant said that the landlord forged his electronic signature and he never signed the tenancy agreement. The landlord's lawyer stated that move-in and move-out condition inspection reports were completed for this tenancy. The tenant claimed that a move-in condition inspection report was done but was incomplete. The tenant stated that no move-out condition inspection report was done with him present, because the landlord evicted him with a bailiff "in three days."

The landlord's lawyer explained that the tenant was provided with two opportunities to conduct a move-out condition inspection on September 13, 2019 and again on September 14, 2019 using the RTB approved form. She claimed that both opportunities were sent by email to the tenant's email address confirmed by the tenant during this hearing, pursuant to a substituted RTB order on November 15, 2019, in the original tenancy agreement, and at a previous RTB hearing. The tenant denied receipt of both emails.

The landlord seeks a monetary order of \$21,190.03 plus the \$100.00 application filing fee. The landlord originally applied for \$26,690.03 but the landlord's lawyer reduced this claim at the hearing to remove \$5,500.00 for unpaid rent for June 2019, claiming that a monetary order was awarded to the landlord at a previous RTB hearing with the tenant.

The landlord seeks to retain the tenant's security and pet damage deposits totaling \$5,500.00. The landlord provided a copy of move-in and move-out condition inspection reports, 220 photographs of the condition of the rental unit when the tenant vacated, copies of invoices, receipts, bank documents, a monetary order worksheet, and a witness statement, dated September 18, 2019, of the condition of the unit when the tenant moved out. The landlord also provided various other documents.

The landlord seeks \$5,500.00 for unpaid July 2019 rent. The landlord's lawyer confirmed that the tenant did not pay this amount, as his rent cheque was returned for insufficient funds. The tenant agreed to pay this amount during the hearing. Both parties provided copies of the tenant's returned July 2019 rent cheque of \$5,500.00. The tenant provided a copy of his bank records, showing the cheque was returned for insufficient funds.

The landlord seeks \$955.45 for unpaid utilities from July to September 2019. The landlord's lawyer claimed that the tenant failed to pay the above amount. She said that utilities are not included in the tenant's monthly rent, as per clause 38 of the parties' written tenancy agreement. She explained that she did not have any bills, invoices, or receipts for the above amount, she only had the landlord's information of the amount.

The landlord seeks \$3,788.58 for bailiff fees. The landlord's lawyer said that the landlord was issued an order of possession in a previous RTB hearing. She confirmed that the landlord filed the order in the Supreme Court of British Columbia, and it was executed on September 11, 2019. She claimed that the tenant refused to vacate the rental unit, so the bailiff had to remove him and his possessions. The landlord provided a copy of the invoice and the landlord's lawyer confirmed that it was paid by the landlord.

The landlord seeks \$45.31 for a new refrigerator shelf. The landlord's lawyer claimed that the shelf was missing when the tenant moved out. The landlord provided an invoice and receipt for this cost, as well as photographs of the refrigerator missing a shelf.

The landlord seeks \$339.10 for carpet cleaning. The landlord provided an invoice for this cost, photographs of the carpet, and a witness statement from September 18, 2019. The landlord's lawyer claimed that the tenant had pets, as per the pet damage deposit he paid, so he is required to shampoo or steam clean the carpets at the end of tenancy, regardless of the length of tenancy, as per Residential Tenancy Policy Guideline 1. She maintained that the tenant did not steam clean or shampoo the carpets upon vacating. She stated that there were stains, feces, and heavy soiling on the carpets, and this damage was noted on the move-out condition inspection report. She claimed there were no issues with the carpet on move-in.

The landlord seeks \$480.00 for repairs to the hardwood flooring. The landlord provided an invoice for this cost and the landlord's lawyer claimed that it was paid. The landlord's lawyer referenced photographs of scratches to the flooring, which she said were caused by the tenant.

The landlord seeks \$61.87 to repair a glass living room door. The landlord provided an invoice for this cost and the landlord's lawyer claimed that it was paid. The landlord's lawyer pointed to photographs of damage to the door, which she said was caused by the tenant.

The landlord seeks \$200.00 for removing garbage from the rental unit. The landlord provided an invoice and receipt for this cost. The landlord's lawyer pointed to photographs of the dirty condition of the rental unit as well as the witness statement from September 18, 2019, upon move-out.

The landlord seeks \$266.70 for cleaning supplies. The landlord provided a receipt for this cost. The landlord's lawyer said that the landlord personally purchased these supplies for the cleaning of the rental unit. She claimed that the tenant did not clean the rental unit upon vacating and pointed to photographs of the unit and the witness statement upon move-out.

The landlord seeks \$4,053.02 for professional cleaning of the rental unit. The landlord provided an invoice and receipt for this cost. The landlord's lawyer claimed that the tenant did not clean the rental unit upon vacating and pointed to photographs of the unit and the witness statement upon move-out.

The tenant disputes the landlord's entire application, except for the \$5,500.00 for July 2019 rent. The tenant provided a written statement, photographs, bank documents, the writ of possession, the order of possession, the previous RTB hearing decision, the tenancy agreement, and other documents.

The tenant claimed that he did not have time to clean the rental unit before vacating because he said he was "thrown out onto the street in three days by the bailiff" after he asked the landlord's lawyer not to enforce the landlord's order of possession. The tenant maintained that the landlord "lied about everything." He said that the landlord forged his signature on the tenancy agreement, and it was a crime that he would report to the RCMP. He said that the landlord committed criminal actions against him, for which he would go to Court.

The tenant maintained that he was not given a tenancy agreement from the landlord within 21 days of the start of the tenancy. He stated that there were several problems with the rental unit when he moved in. He said that there were problems with the two bathtubs, the stove, the air conditioning, and there was no grass. He claimed that the RTB found fraud against the landlord and that he would take further action against the landlord for fraud.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$5,500.00 for unpaid July 2019 rent, as the tenant agreed to pay this amount during the hearing. The tenant agreed during the hearing that his monthly rent was \$5,500.00 and that his cheque was returned for insufficient funds for July 2019. The tenant provided a copy of his bank statement, showing that his July 2019 rent cheque to the landlord was returned for insufficient funds on July 2, 2019. The landlord also provided a copy of the returned cheque statement of July 5, 2019. The tenant lived in the rental unit during July 2019 and I find that the tenant is required to pay the rent of \$5,500.00 each month to the landlord, as per section 26 of the *Act*.

I dismiss the landlord's claim for \$955.45 for unpaid utilities from July to September 2019. The landlord did not provide copies of any utility bills, invoices, receipts or other documentary evidence to show the above amount. I find that the landlord failed to meet part 3 of the above test.

I award the landlord \$3,788.58 for bailiff fees. The landlord provided a detailed invoice with a breakdown for this amount and the landlord's lawyer affirmed that the landlord paid it. The landlord was required to execute an order of possession on September 11, 2019, which was issued by the RTB. The tenant agreed that he was removed from the rental unit by a bailiff and provided a copy of the two-day order of possession issued by the RTB against him on June 21, 2019. The tenant also provided a copy of the writ of possession, filed in the Supreme Court of British Columbia on August 29, 2019. I find that the landlord was required to hire a bailiff in order to obtain peaceful and vacant possession of the rental unit and the tenant is responsible for this cost.

I award the landlord \$45.31 to purchase a new refrigerator shelf. The landlord provided an invoice and receipt for this cost. The landlord provided photographs, showing a missing refrigerator shelf. I find that the tenant is responsible for the missing refrigerator shelf and the cost.

I award the landlord \$339.10 for carpet cleaning. The landlord provided a detailed invoice with a breakdown for this cost. The landlord's lawyer affirmed that it was paid by the landlord. Residential Tenancy Policy Guideline 1 indicates that the tenant is required to shampoo or steam clean the carpet in the rental unit at the end of the tenancy, regardless of the length of tenancy, if he had a pet. The tenant paid a pet damage deposit to the landlord and did not dispute having a pet at the rental unit during this tenancy. The landlord also provided photographs of the stains and dirty condition of the carpet upon move-out. I find that the tenant is responsible for this cost as he did not provide documentary or testimonial evidence that he cleaned the carpet upon move-out.

I award the landlord \$480.00 for hardwood flooring repairs. The landlord provided an invoice for this cost. The landlord's lawyer affirmed that the landlord paid this cost. The landlord provided photographs of the scratches to the hardwood flooring upon move-out. I find that the tenant is responsible for this damage and cost.

I award the landlord \$61.87 for the glass door repair. The landlord provided an invoice for this cost. The landlord's lawyer affirmed that the landlord paid this cost. The landlord provided photographs of the crack to the glass door, requiring repair, upon move-out. I find that the tenant is responsible for this damage and cost.

I award the landlord \$200.00 for garbage removal. The landlord provided an invoice and receipt for this cost. The landlord provided photographs of the dirty condition of the rental unit and the garbage upon move-out. I find that the tenant is responsible for this cost, as he agreed he did not have time to clean the rental unit when he moved out.

I award the landlord \$266.70 for cleaning supplies purchased to clean the rental unit. The landlord provided a receipt for this cost. The landlord provided photographs of the dirty condition of the rental unit upon move-out. I find that the tenant is responsible for this cost, as he agreed he did not have time to clean the rental unit when he moved out.

I award the landlord \$2,000.00 of the \$4,053.02 for cleaning of the rental unit. The landlord provided an invoice and receipt for the total cost of \$4,053.02. However, I find that \$2,000.00 is a more reasonable amount, as I find the landlord's cleaners' number of hours, rate per hour, and number of cleaners to be high. The landlord's cleaning invoice references the cleaning supplies used of approximately \$280.00 and an additional charge for those supplies was not made on this invoice. The landlord provided photographs of the dirty condition of the rental unit upon move-out. I find that the tenant is responsible for this cost, as he agreed he did not have time to clean the rental unit when he moved out.

As the landlord was mainly successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security and pet damage deposits totalling \$5,500.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposits, totalling \$5,500.00, in partial satisfaction of the monetary award.

During the hearing, the tenant provided an address for service, at his lawyer's office, for the landlord to serve him with a monetary order, if the landlord was successful in this application. The tenant affirmed, under oath, that this service address could be used by the landlord. I notified both parties that I would include this service address in my decision, and it is located on the front page of this decision.



Conclusion

I order the landlord to retain the tenant's security and pet damage deposits, totalling \$5,500.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$7,281.56 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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