



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT, MNDCT, RP (Tenant's Application)  
                             FFL, MNDCL-S, MNDL-S, MNRL-S, OPU (Landlord's Application)  
                             FFL, OPUM-DR (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution, filed on July 2, 2019, the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, an Order that the Landlord make repairs to the rental unit, monetary compensation from the Landlord and to recover the filing fee.

In the Landlord's Application for Dispute Resolution, filed on July 4, 2019, the Landlord requested an Order of Possession, monetary compensation from the Tenant, authority to retain their security deposit and to recover the filing fee.

The Landlord filed a further Application for Dispute Resolution on July 9, 2019 wherein the Landlord again requested an Order of Possession, monetary compensation from the Tenant and recovery of the filing fee.

The hearing was conducted by teleconference on August 27, 2019, October 29, 2019, December 19, 2019 and January 10, 2020. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both parties also called witnesses in support of their position.

**This Decision must be read in conjunction with my Interim Decisions dated August 28, 2019, November 1, 2019 and December 19, 2019.**

### Preliminary Matter—Evidence

The Tenant claimed that he had WhatsApp and text communications with the Landlord which would support his position. Copies of those messages were not submitted as evidence before me. The Tenant further claimed that he did not know how to submit copies of those messages in evidence.

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 Matter—Relief Sought

On the first hearing date the parties confirmed that the Tenant vacated the rental unit on July 31, 2019; as such the Tenant's request for an Order canceling the Notice and an Order that the Landlord make repairs to the rental unit, as well as the Landlord's request for an Order of Possession were no longer required.

### Preliminary Matter—Recording of Hearings

During the hearing the parties were informed that hearings before the Residential Tenancy Branch are not recorded and that recordings were prohibited.

Branch records indicate the Tenant also called and asked an information officer if recordings were made.

At the hearing on January 10, 2020, the Tenant again asked if there was a recording made of the proceedings. Again, I informed the Tenant that the hearings were not recorded, that the parties were prohibited from making any recordings, and that if either party had made any recordings of the proceedings, they were Ordered to delete those recordings and make no use of them.

This prohibition is provided for in *Residential Tenancy Branch Rules of Procedure* 6.11, 6.12 and 6.13 which read as follows:

### **Recording of hearings**

#### **6.11 Recording prohibited**

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

#### **6.12 Official transcript**

A party requesting an official transcript by an accredited Court Reporter must make a written request stating the reasons for the request to the other party and to the Residential Tenancy Branch directly or through a Service BC Office not less than seven days before the hearing.

An arbitrator will determine whether to grant the request and will provide written reasons to all parties and issue any necessary orders.

If permission is granted, the party making the request must:

- a) prior to the hearing, provide the Residential Tenancy Branch with proof of the Court Reporter's accreditation;
- b) make all necessary arrangements for attendance by the accredited Court Reporter and their necessary equipment;
- c) pay the cost of the accredited Court Reporter's attendance at the dispute resolution hearing;
- d) pay the cost of the Court Reporter's services and the cost of transcripts; and
- e) provide all parties and the Residential Tenancy Branch with official copies of the transcript.

#### **6.13 Restricted use of recordings**

Transcripts may not be used for any purpose other than the proceeding, a review or any court proceeding.

As authorization for a transcript has not been requested, nor granted, any recording of these proceedings was done contrary to the *Rules* and my specific Order made during the January 10, 2020 hearing.

Preliminary Matter—Delivery of Decision

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

Background and Evidence

In support of his claim, the Tenant testified as follows.

He confirmed that he moved into the rental property on November 15, 2018. Monthly rent was \$2,900.00. The Tenant also paid a security deposit of \$1,450.00. A copy of the residential tenancy agreement was provided in evidence and which confirmed this testimony.

On the Tenant's Application for Dispute Resolution he indicated that he sought the sum of \$1,000.00 from the Landlord. At the first hearing before me he stated that he wanted \$2,000.00.

In terms of the amount requested, the Tenant stated that he claimed \$1,000.00 by "taking this figure out of the sky" because of the malfunctioning dryer. He stated that they had to run the dryer 3-5 times per load over the course of living in the residence. He claimed that he reported it to the Landlord on the day after they moved in.

The Tenant also stated that the nature of his claim related to the following:

- the issues with the dryer;
- lack of lighting in the driveway;
- lack of lighting in the garage;

- lack of lighting on the back porch;
- no fan installed in the kitchen, such that every time they cooked, they had to use minimal amounts of heat;
- the bathroom water did not run properly; and,
- the kitchen faucet only ran on a sprinkle and they could not adequately clean their dishes.

The Tenant stated that he repeatedly communicated with the Landlord by WhatsApp and text messages about these issues and asked her to fix them. The Tenant stated that the Landlord told them that she would come to fix these issues, however, she only fixed some other minor issues and did not address the issues listed above.

The Tenant confirmed that they moved from the rental unit on August 1, 2019.

In response to the Tenant's claims the Landlord testified as follows.

The Landlord stated that after a few months, near the end of March 2019, the Tenant told them that there was a problem with the dryer. She stated that she brought a repairperson to look at that dryer and there was nothing wrong with it. She further stated that the dryer did not work because the Tenant did not clean out the filter and the Tenant overloaded the dryer. (The Landlord also testified that she had documentary evidence to support her testimony that she hired a repairperson. That evidence was also not before me.)

The Landlord testified that the Tenant raised concerns about the kitchen fan in July 2019. She stated that at that time he was using that as an excuse not to pay rent.

The Landlord testified that none of the other listed items were actually brought to her attention.

In terms of her own application, the Landlord confirmed she is seeking \$8,700.00 in monetary compensation. This sum includes unpaid rent for June and July 2019 at \$2,900.00 per month and a further 1 month rent as a "penalty" for the Tenant breaking the fixed term. She stated that although she re-rented the unit as of August 1, 2019, she requested a further \$2,900.00 as she felt she had to rush and get a bad tenant because she didn't have time to screen and she had to fill the space.

The Landlord also sought the sum of \$966.95 for the unpaid utility of gas and hydro. The Landlord stated that the Tenant did not pay one penny of utilities and the \$966.95 owing was for the totality of his tenancy.

The Landlord also sought the sum of \$1,312.50 for the cost to clean the rental unit. She testified that the condition of the rental unit at the end of the tenancy was "awful". She stated that there were boxes everywhere and garbage everywhere. She stated that originally, she estimated the cost would be \$700.00 but because the cleaning company had to move all the items and dispose of them as well the amount was \$1,312.50. In support of her claim she provided photos of the rental unit, as well as invoices for the cost of cleaning and repairs.

The Landlord also sought the advertising costs of \$72.35.

The Landlord also sought the cost to repair holes in the walls. In this regard she claimed \$158.00 for the material. She stated that she could not do the work herself due to health reasons and as such hired a third party at a cost of \$300.00 in labour. These amounts were supported by her documentary evidence.

The Tenant responded to the Landlord's monetary claim as follows.

The Tenant claimed that he paid rent for June 2019. He stated that he made an agreement with the Landlord that the Landlord would retain the security deposit and the Tenants would pay the balance. The Tenant then stated that he did not pay the balance because the Landlord did not take care of "all this stuff". He also stated that the Landlord then issued the 10 Day Notice such that he believed she backed out of their deal.

The Tenant confirmed that he did not pay rent for June 15 to August 1, 2019.

In terms of the utilities, the Tenant stated that he paid the utilities for "the first half" of the tenancy, which he estimated was "\$300.00 and change". He then stated that the payment was returned at some point in time in March or April which he did not realize this until July of 2019.

The Tenant also claimed that the Landlord agreed to take \$1,000.00 off what he owed her because of the "dryer", and he agreed that was fair.

In response to the Landlord's claim for \$1,312.50 for cleaning, the Tenant stated that he was cleaning the rental unit at the time they were moving out, at which time the Landlord "made a deal with him" again, wherein she offered to have someone else come in to clean and she would not charge him for this due to the issues during the tenancy.

The Tenant also submitted that after some discussions the Landlord agreed to give him \$1,700.00 in concessions. The Tenant stated that he believes he owes the Landlord a further \$1,000.00 after considering these concessions and the Landlord retaining his security deposit.

When the hearing reconvened on January 10, 2020, the Tenant's 12-year-old daughter, D.R. testified as follows.

In response to the Tenant's question as to when he first complained to the Landlord, about the problems, she stated that she wasn't at the rental unit "often" but from her perspective there were always problems".

In terms of problems with the rental unit D.R. testified as follows. She stated that the fan over the stove did not work which caused the fire alarm to go off and would also steam the windows up. She stated this wasn't fixed during the tenancy. She also stated that the dryer did not work, and they would have to dry their clothes 5-6 times. She stated that she did not see the Landlord come over to fix these issues. D.R. also testified that the motion detecting lights did not come on.

D.R. also testified that she did not hear the Landlord and her dad discuss any financial issues.

D.R. stated that she first met the Landlord in June of 2019. She said that the Landlord was doing the grass at that time. D.R. said that she did not remember the first time she heard her dad speak to the Landlord about these issues, but it was on the telephone some time *after* June 2019. D.R. stated that she did not remember the Landlord's brother attending the rental unit.

D.R. confirmed she was not at the rental unit the day the tenancy ended.

## 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).

I will first deal with the Tenant's claim.

As noted previously, the Tenant claimed compensation in the amount of \$1,000.00. At the first hearing the Tenant stated that he wanted \$2,000.00 in compensation.

Rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application. As the Tenant claimed \$1,000.00 on his Application, his claim is limited to this amount.

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.

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 Tenant's claim relates to allegations of a malfunctioning dryer, kitchen exhaust fan, in adequate water pressure and lighting. The Tenant confirmed that the figure of \$1,000.00 was "taken out of the sky".

The Landlord testified that the Tenant did not clean the dryer screen and overloaded the dryer. She also testified that she had a repairperson attend, and there was no problem with dryer.

I find the Tenant has failed to submit sufficient evidence to support his monetary claim. While he may have been frustrated by the dryer, kitchen fan, water pressure, and lighting, I find he has failed to provide any evidence to support a finding that he should receive \$1,000.00 in monetary compensation from the Landlord for these issues. As noted above, the Tenant bears the burden of proving his claim on a balance of probabilities. In the case before me, I find he has failed to submit sufficient evidence to prove that he suffered a related financial loss, nor has he provided any evidence to prove the actual amount required to compensate for the claimed loss.

The Tenant's daughter testified that the first time she heard her father complain to the Landlord about the issues in the rental unit was after June 2019. This is consistent with the Landlord's testimony that the first time she heard about the kitchen fan issues was in July of 2019 when she says the Tenant used it as an excuse not to pay rent.

In all the circumstances, I find the Tenant has failed to prove he is entitled to \$1,000.00 in compensation from the Landlord.

I will now address the Landlord's claims for the following:

Unpaid rent for June 2019	\$2,900.00
Unpaid rent for July 2019	\$2,900.00
Lease break penalty	\$2,900.00
Unpaid utilities	\$966.95

Cleaning	\$1,312.50
Advertising	\$72.35
Wall repair materials	\$158.00
Wall repair labour	\$300.00
Filing fee	\$100.00

The Tenant conceded he did not pay rent for June and July 2019, although he alleged he had an agreement with the Landlord that she would retain his security deposit towards half of the June 2019 rent, and he would receive \$1,700.00 in concessions due to issues at the rental unit.

The Landlord denied making any such agreement with the Tenant. The Tenant's witness confirmed she did not hear any financial discussions with the Landlord and her father.

I find the Landlord is entitled to monetary compensation for the unpaid rent for June and July 2019. I am not persuaded that the parties reached an agreement whereby the Tenant would be credited the sum of \$1,700.00 towards any amount owing.

While the parties may specifically agree to liquidated damages (sometimes referred to as a "lease break fee") in the tenancy agreement, no such clause existed in this tenancy. As well, the Landlord was able to re-rent the unit as of August 2019. I therefore find she is not entitled to the claimed \$2,900.00 "lease break penalty".

The Landlord claimed compensation for the outstanding utilities relating to the tenancy. The tenancy agreement confirmed that utilities were not included in the rent payment. In support of her claim the Landlord provided copies of the utility invoices. The Tenant conceded that he did not pay towards the outstanding utilities. He also did not take issue with the amounts claimed by the Landlord. His submissions in this regard related to the fact he claimed to have paid the sum of \$300.00 at some point, which he discovered in June of 2019 had been returned to him, the net result being that he paid nothing towards the utilities. On balance, I find the Landlord has proven her claim in this regard and is therefore entitled the amounts claimed for unpaid utilities.

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.

I find the Tenant failed to leave the rental unit reasonably clean and free of damage as required by section 37. I am persuaded by the Landlord's testimony, as well as photos submitted by the Landlord which show the condition of the yard at the end of the tenancy. The Landlord also provided in evidence a letter from the city in which the rental unit is located informing the Landlord that the property needed to be cleaned up and building materials and rubbish removed.

It is notable that the Tenant did not dispute the amounts claimed by the Landlord. He submitted that he was in the process of cleaning when the Landlord told him to stop and that she would not charge him for cleaning costs as compensation for issues with the rental unit. The Landlord denied any such agreement was reached. The Tenant's witness also confirmed she was not present on the day the tenancy ended. On balance I find the Tenant has submitted insufficient evidence to support a finding that the Landlord agreed he did not have to clean the rental unit to a reasonable standard. I therefore award the Landlord the amounts claimed for cleaning.

The Tenant also did not dispute the amounts claimed by the Landlord to repair the walls. I therefore award her related compensation.

The undisputed evidence is that the tenancy ended prior to the end of the fixed term. Although the Landlord was able to re-rent the rental unit as of August 1, 2019, she incurred advertising costs. I find these costs to be reasonable and recoverable from the Tenant.

As the Landlord has been substantially successful, I find she is entitled to recover her filing fee.

### Conclusion

The Tenant vacated the rental unit on July 31, 2019. As such, the Tenant's request for an Order canceling the Notice and an Order that the Landlord make repairs to the rental

unit, as well as the Landlord's request for an Order of Possession are dismissed without leave to reapply.

The Tenant's claim for monetary compensation from the Landlord and recovery of the filing fee is dismissed.

The Landlord is entitled to monetary compensation in the amount of **\$8,709.80** for the following:

Unpaid rent for June 2019	\$2,900.00
Unpaid rent for July 2019	\$2,900.00
Unpaid utilities	\$966.95
Cleaning	\$1,312.50
Advertising	\$72.35
Wall repair materials	\$158.00
Wall repair labour	\$300.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$8,709.80</b>

The Landlord may retain the Tenant's security deposit of \$1,450.00 towards the amounts outstanding and is entitled to a Monetary Order for the balance due in the amount of \$7,259.80. 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: January 24, 2020

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Residential Tenancy Branch