



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNR MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 13, 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;
- a monetary order for unpaid rent or utilities;
- 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 was represented at the hearing by A.B., an agent. A.B. provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, A.B. testified that the Notice of Dispute Resolution Hearing package was served on the Tenant by registered mail on September 19, 2019, and that a subsequent documentary evidence package was served on the Tenant by registered mail on November 27, 2019. The documents were sent to the forwarding address provided by the Tenant. Service of these documents was supported by Canada Post registered mail documentation. Pursuant to sections 88, 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenant is deemed to have received the Notice of Dispute Resolution Hearing package and the subsequent evidence package on September 24 and October 2, 2019, respectively. The Tenant did not submit documentary evidence in response to the Application.

A.B. was 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 a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

A copy of the tenancy agreement submitted into evidence confirms the fixed-term tenancy commenced on August 1, 2018 and was expected to continue to July 31, 2019. However, A.B. testified the tenancy ended on June 15, 2019. During the tenancy, rent in the amount of \$2,000.00 per month was due on or before the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00, which the Landlord holds.

The Landlord's claims were supported by a Condition Inspection Report (the "Report"). The Report indicates the move-in condition inspection occurred on August 10, 2018. The Tenant attended the move-in condition inspection and signed to confirm he agreed the report fairly represented the condition of the rental unit at the beginning of the tenancy.

The Report indicates the move-out condition inspection took place on June 18, 2019. The Tenant attended the move-out condition inspection and agreed the Landlord could retain the security and pet damage deposits for various items described. However, A.B. indicated a preference to address each item in the Monetary Order Worksheet dated September 13, 2019.

First, the Landlord claims \$90.00 to re-key locks. A.B. testified that the Tenant returned only one of two keys given to him at the beginning of the tenancy. A.B. confirmed the new tenants, who took possession of the rental unit on June 25, 2019, asked that the locks be changed. An invoice dated June 30, 2019 was submitted in support.

Second, the Landlord claims \$94.50 for carpet cleaning. A.B. testified that the Tenant did not clean the carpets at the end of the tenancy as required under the tenancy agreement, and that animal hair and odour lingered in the rental unit. An invoice dated June 22, 2019 was submitted in support.

Third, the Landlord claimed \$107.01 for yard cleaning and waste removal. A.B. testified the yard was not maintained as per a Lawn & Garden Addendum submitted into evidence. A.B. testified the lawn was also littered with dog feces. The Landlord submitted photographic evidence depicting weeds and dog feces. The Landlord also submitted an invoice dated June 24, 2019 in support.

Fourth, the Landlord claimed \$105.00 for a flea inspection. A.B. testified the Tenant did not retain a licensed pest control operator to ensure the unit was free of fleas at the end of the tenancy, as required by the Pet Addendum submitted into evidence. An invoice dated June 19, 2019 was submitted in support.

Fifth, the Landlord claims \$238.88 for general cleaning in the rental unit. A.B. testified the Tenant did not clean the rental unit at the end of the tenancy. She testified that areas to be cleaned included bathrooms, cupboards and drawers. Written submissions indicate the Report did not disclose any cleanliness issues at the beginning of the tenancy. Photographs depicting the area under the kitchen sink, a dirty oven, and the lower portion of a door were submitted in support. An invoice dated June 26, 2019 was also submitted in support.

Sixth, the Landlord claims \$63.00 to replace a garage door remote. A.B. testified the Tenant was provided with two garage door remotes at the beginning of the tenancy and that only one functioning remote was returned. This claim is for the purchase and re-programming of a replacement remote. An invoice dated July 3, 2019 was submitted in support.

Seventh, the Landlord claims \$1,600.00 for rent due for the month of June 2019. A.B. testified the Tenant did not pay rent for the month of June 2019. A.B. confirmed the Landlord was able to re-rent the unit effective June 25, 2019. As a result, the Landlord is only claiming rent for the period from June 1-24, 2019. The amount claimed was calculated based on a per diem rate of \$66.67.

Eighth, the Landlord claims \$250.00 for liquidated damages. A standard liquidated damages clause is found at paragraph 5 of the tenancy agreement.

Ninth, the Landlord claims \$25.00 for a late rent payment fee on June 1, 2019. A late payment fee of \$25.00 for each occurrence is found at paragraph 10 of the tenancy 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.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on the unchallenged and 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 \$90.00 to re-key locks, section 25 of the *Act* confirms that a landlord must rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, if the tenant requests this at the start of a tenancy. The cost is borne by the landlord. In this case, A.B. confirmed the new tenants requested that the locks be changed. As a result, the Landlord had an obligation to rekey the locks even if the Tenant did not return all keys at the end of his tenancy. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$94.50 for carpet cleaning, I find the Landlord has demonstrated an entitlement to the amount claimed. A.B. testified the carpets had not been cleaned at the end of the tenancy, and that dog hair and odours remained in the rental unit. This aspect of the Landlord's claim was also supported by an invoice.

With respect to the Landlord's claim for \$107.01 for yard cleaning and waste removal, I find the Landlord has demonstrated an entitlement to the amount claimed. The Landlord's claim was supported by the Lawn & Garden Addendum, photographic evidence, and an invoice.

With respect to the Landlord's claim for \$105.00 for a flea inspection, I find the Landlord has demonstrated an entitlement to the amount claimed. The Landlord's claim was supported by a Pet Addendum and an invoice.

With respect to the Landlord's claim for \$238.88 for general cleaning in the rental unit, I find the Landlord has demonstrated an entitlement to the amount claimed. This aspect of the Landlord's claim was supported by photographic evidence depicting the interior of the rental unit and an invoice.

With respect to the Landlord's claim for \$63.00 to replace a garage door remote, I find the Landlord has demonstrated an entitlement to the amount claimed. This aspect of the Landlord's claim was supported by an invoice.

With respect to the Landlord's claim for \$1,600.00 for rent due on July 1, 2019, I find the Landlord has demonstrated an entitlement to the amount claimed. The Landlord minimized her losses by re-renting the unit effective June 25, 2019. As a result, the Tenant is obligated to pay rent for the period from June 1-24, 2019.

With respect to the Landlord's claim for \$250.00 for liquidated damages, Policy Guideline #30 confirms that a fixed-term tenancy exists when "the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date." Policy Guideline #30 goes on to state: "neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties." Further, Policy Guideline #4 states the following about liquidated damages clauses:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

...

*If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.*

[Reproduced as written.]

I find the Landlord and Tenant were parties to a fixed-term tenancy for the period from August 1, 2018 to July 31, 2019, and that the Tenant breached the fixed-term tenancy

agreement by ending the tenancy on June 15, 2019. Further, I find the liquidated damages clause found in paragraph 5 of the tenancy agreement is not a penalty. The liquidated damages clause was agreed to in advance and is a reasonable amount when compared to monthly rent. Accordingly, I award the Landlord \$250.00 as recovery of liquidated damages.

With respect to the Landlord's claim for \$25.00 for a late rent payment fee on June 1, 2019, section 7 of the *Residential Tenancy Regulation* confirms a landlord may charge "an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent". The fee must be provided for in the tenancy agreement. Having reviewed the tenancy agreement submitted into evidence, I find it provides for the payment of a late fee in paragraph 10. Therefore, I grant the Landlord a late payment fee in the amount of \$25.00 for rent due on June 1, 2019.

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 and pet damage deposit 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 \$583.39, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Carpet cleaning:	\$94.50
Yard cleaning and waste removal:	\$107.01
Flea inspection:	\$105.00
General cleaning:	\$238.88
Garage door remote:	\$63.00
Unpaid rent (June 1-24):	\$1,600.00
Liquidated damages:	\$250.00
Late payment fee:	\$25.00
Filing fee:	\$100.00
LESS security deposit:	(\$1,000.00)
LESS pet damage deposit:	(\$1,000.00)
<b>TOTAL:</b>	<b>\$583.39</b>

Conclusion

The Landlord is granted a monetary order in the amount of \$583.39. 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: January 20, 2020

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Residential Tenancy Branch