



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, MNRL-S, MNDL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- 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 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 26, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on March 3, 2020.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on March 3, 2020.

### *Preliminary Issue*

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$1,715.86 to \$2,340.86 to include reimbursement for additional expenses for labour for cleaning and repairs. The landlord's claim inadvertently did not reflect this expense. The landlord's claim was filed February 14, 2020 and work on the cleaning and repairs continued throughout February 2020.

The landlord clarified the landlord's claim as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Rent February 2020	\$1,400.00
Repair expenses	\$315.86
Reimbursement of 25 hours labour, \$25.00 an hour	\$625.00
<b>TOTAL CLAIM</b>	<b>\$2,340.86</b>

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include labour expenses in addition to repair expenses and that the landlord would continue to clean and repair the unit in the month of February 2020. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's overall claim by \$625.00 for compensation for labour costs. The total monetary order requested by the landlord is \$2,340.86 as well as \$100.00 reimbursement of the filing fee.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- 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 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified the parties entered into a fixed 1-year tenancy agreement on August 1, 2019. Rent was \$1,400.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$700.00 and a pet deposit of \$700.00 (together "the deposit" of \$1,400.00).

On January 14, 2020, the tenant gave the landlord notice of intention to vacate on January 31, 2020. The landlord testified that he made diligent efforts starting immediately to find another tenant for the unit but was not successful until a replacement occupant moved in on March 1, 2020.

The landlord testified he advertised daily and showed the unit to a few prospective occupants. However, the stated that the tenant would only allow him a few minutes at 7:00 PM each evening to show the unit; if he and a prospective tenant were late, the tenant would not allow them entrance.

The landlord claims \$1,400.00 in lost rent for the month of February 2020.

The landlord testified that the tenant had two cats and a large dog who did considerable damage to the unit including destroying window coverings. As well, dog feces littered the yard and ruined grass requiring landscaping and lawn seeding.

The landlord submitted many photographs to illustrate the condition of the unit when the tenant vacated. The photographs show a dirty, garbage-strewn interior, and substantial

animal feces and landscape damage from animals. The landlord summarized the condition of the unit when the tenant vacated in his application as follows:

*“The tenant left the unit in a complete mess and dirty:*

- 1. Walls were dirty, scratched, baseboards too.*
- 2. Blinds were missing, some damaged, and screens too.*
- 3. Appliances and floors dirty, nothing cleaned.*
- 4. Kitchen and bathroom sinks clogged and dirty.*
- 5. Light bulbs some missing, some burnt.*
- 6. Damaged and missing door stoppers, toilet paper holders, towel holders.*
- 7. Green area in backyard damaged, lawn was destroyed by a big dog.”*

The landlord submitted receipts totalling \$315.86 for items he purchased to repair to the unit. The landlord testified that he did all the work himself and estimated his time at 25 hours at a rate of \$25.00; the landlord requested reimbursement in the amount of \$625.00 for his labour.

The landlord requested reimbursement of the \$100.00 filing fee and authorization to apply the deposit of \$1,400.00 to the claim.

The landlord clarified the claim as follows:

ITEM	AMOUNT
Rent February 2020	\$1,400.00
Repair expenses	\$315.86
Reimbursement of 25 hours labour, \$25.00 an hour	\$625.00
Filing fee	\$100.00
(Less deposit)	(\$1,400.00)
<b>TOTAL CLAIM</b>	<b>\$1,040.86</b>

## Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

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).

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award

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I have considered all the evidence submitted by the landlord, including the receipts and the photographs showing the unit needed cleaning and repairs. The landlord was

credible, and his testimony was well-supported by documentary evidence including photographs.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning and repairs when the tenant vacated, the tenant and the tenant's pets are responsible for the lack of cleanliness and the damage, the landlord incurred the amount claimed in expenses, the landlord spent the amount of time claimed to clean and repair the unit, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

### *Rent*

The landlord testified the tenancy was a fixed term tenancy and the tenant provided two weeks notice of her intention to vacate.

I am satisfied based on the landlord's testimony and evidence, that the tenant vacated the unit at the end of January 2020 before the end of the fixed term and the landlord made all reasonable efforts to find a replacement occupant. I find it is reasonable that the unit would remain vacant for the month of February and I accept the landlord's uncontradicted testimony as to his diligent efforts to mitigate. I find that the tenant is responsible to reimburse the landlord for rent for the month of February 2020.

I accordingly allow the landlord reimbursement of \$1,400.00 representing rent for February 2020.

The landlord is authorized to apply the security deposit to the award under section 72.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent February 2020	\$1,400.00
Repair expenses	\$315.86
Reimbursement of 25 hours labour, \$25.00 an hour	\$625.00
Filing fee	\$100.00
(Less deposit)	(\$1,400.00)

<b>TOTAL Monetary Award</b>	<b>\$1,040.86</b>
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I grant a monetary order to the landlord in the amount of **\$1,040.86**.

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,040.86**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: March 31, 2020

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Residential Tenancy Branch