



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      LRE, CNR, FFT, OLC, CNC FFL, OPR, MNDL-S, OPC, MNRL-S

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$1,100 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,953.36 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This hearing was reconvened from a hearing on December 19, 2019. An adjournment was granted because neither party had served the other with their evidence. In my written decision following the December hearing (the “**Interim Decision**”) I ordered the parties each serve the other with their documentary evidence by January 10, 2020. I also ordered that neither party may amend their application.

Both parties 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 was assisted by his brother (“**KR**”)

The landlord served the tenant his evidence by January 10, 2020.

### **Preliminary Issue – Service of Tenant’s Documents**

At the outset of the hearing, the landlord testified that the tenant served him with her documentary evidence on January 20, 2020, in contravention of my order made in the Interim Decision. The tenant admitted that this was the case and testified that the reason she missed the deadline was that her brother passed away, and she had to leave to province to attend the funeral.

Section 66 of the Act permits me to extend deadlines in exceptional circumstances. I find the tenant’s circumstances to be exceptional. As such, I deem that the tenant served her evidence on the landlord in accordance with my order. In making this order, I considered the prejudice the landlord would suffer if the documents were permitted to be entered into evidence. The landlord was unable to articulate any prejudice he suffered as a result of this late service, and could not say what, if anything, he would have done differently had the tenant served him with her evidence on January 10, 2020. Additionally, I note that the Rule of Procedure 3.14 permits an applicant to serve evidence up until 14 days before the date of the hearing. January 20, 2020 is more than 14 days before the reconvened hearing.

As such, I find that the landlord was not prejudiced by the tenant’s late service of evidence. In the circumstances, I find it appropriate to admit the tenant’s evidence.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$1,100;
- 2) retain the security deposit in partial satisfaction of this amount; and
- 3) recover the filing fee from the tenant?

Is the tenant entitled to

- 1) a monetary order \$3,953.36;
- 2) an order that the landlord comply with the Act; and
- 3) recover the filing fee from the landlord?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The tenant moved into the rental unit October 2014. The rental unit is the upper unit of a two-unit residential property. The parties had an oral tenancy agreement (the “**Oral Agreement**”) that the tenant would pay \$1,400 per month plus her share of utilities (that is, the cost of the hydro and gas utilities for the rental unit only). The BC Hydro and Fortis BC utilities (collectively, the “**Utilities**”) for both the rental unit and the unit in the basement of the residential property (the “**Lower Unit**”) were in the tenant’s name. The parties agree that, under the Oral Agreement, the tenant would pay the full amount of the Utilities bill, and then deduct equal to an amount equal to 40% of each bill from her next month’s rent payment. The parties agree that the tenant provided a security deposit of \$575 to the landlord, which the landlord returned to the tenant after the tenancy ended. The tenant alleges, without any supporting evidence, that she also paid a \$400 security deposit for the Lower Unit in October 2014. The landlord denies this.

The landlord did not make a condition inspection report was made at the start of the tenancy.

On March 1, 2019, the parties entered into a written tenancy agreement (the “**Written Agreement**”) to rent the rental unit. The Written Agreement states that monthly rent is to be \$1,300 per month, and the tenant “will be responsible to pay hydro and gas for up/down”, which I understand to mean the Utilities for both the rental unit and the Lower Unit.

The landlord did not conduct a move-out condition inspection, nor did he offer the tenant two opportunities to do so.

The tenant vacated the rental unit at the end of November 2019.

The landlord testified that the tenant only paid \$750 in rent for the month of November 2019. The tenant agreed. The landlord seeks a monetary order for \$550 for unpaid rent.

The landlord testified that the tenant left the rental unit in poor condition at the end of the tenancy. He testified that the tenant left garbage on the patio and in the back yard, and that the tenant failed to remove a significant amount of furniture and personal belongings from the garage. He submitted photographs to corroborate his testimony.

The landlord testified that he incurred significant costs in correcting this damage. He submitted two receipts listing the following expenses he incurred:

Steam cleaning carpets	\$300.00
Garbage removal	\$450.00
House cleaning	\$350.00
<b>Total</b>	<b>\$1,100.00</b>

The landlord has not amended his claim to seek this increased amount (his original application listed his claim for cleaning and related costs at \$550).

The tenant applied for a monetary order of \$3,953.36, representing the following:

40% of Utilities costs since September 2015	\$3,153.36
Security Deposit for Lower Unit	\$400.00
Compensation for her time cleaning the Rental Unit at the start of the tenancy	\$300.00
Cost of carpet cleaning at the start of the tenancy	\$100.00
<b>Total</b>	<b>\$3,953.36</b>

The tenant testified that she paid Fortis BC bills and BC Hydro bills for the entire rental property since the start of the tenancy. She submitted bank statements and a hand-written ledger in support of this.

The tenant argued that she should be compensated for the Lower Unit's share of the Utilities costs for the entire time she has been paying the full amount of the Utilities bills. She testified that the term in the Written Agreement which requires her to pay the full amount of Utilities costs should be ignored, as the landlord charges the Lower Unit tenant for utilities. She submitted a copy of the tenancy agreement for the Lower Unit, which shows that monthly rent is \$750, inclusive of utilities.

The tenant testified that the rental unit was filthy when she took possession of it. She testified that she spent two weeks cleaning it. The tenant called a witness ("**LM**"), who testified that the house was "a mess" at the start of the tenancy and that the tenant rented a carpet shampooer to clean the carpets. She testified that the tenant had to pay for garbage to be removed as well.

The tenant submitted no documentary evidence as to the condition of the rental unit at the start of the tenancy (such as photographs, video, or emails sent to the landlord regarding the condition) or the expense claimed (such as an invoice or receipt). As stated above, no condition inspection report was prepared at the start of the tenancy.

The tenant called a second witness (“DH”) who testified that she was cleaning the rental unit and helping the tenant move in December 2020, and that landlord attended and demanded that she stop. She testified that the landlord pushed her and that she pushed back. She testified that the police were called, and that the landlord told them that he would finish cleaning the rental unit himself.

The landlord testified that the tenant and DH were not moving the tenant’s possessions out of the rental unit, but rather into the garage. The tenant agreed, and said she planned on storing some of her belongings there until December 10, 2019, and that they would then be picked up by charity. The landlord testified that he did not give the tenant permission to do this, and that the tenant did not ask if she could do this.

The landlord testified that as he did not know the belongings left in the garage were to be picked up by charity, he had them disposed of.

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, each party is required to prove, on a balance of probabilities, that the facts supporting their respective claims are true.

#### **1. Landlord’s Claim**

##### **a. Unpaid Rent**

The tenant admitted that she did not pay \$550 of November 2019 rent. Section 26 of the Act states:

**Rules about payment and non-payment of rent**

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As such, I find that the tenant must pay the balance of rent for November to the landlord (\$550).

b. Cleaning Costs

As the Interim Decision explicitly prohibited the parties from amending their claims, I do not permit the landlord to amend his claim for compensation for cleaning and related expenses from \$550 to \$1,100.

The landlord did not submit any evidence as to the condition of the interior of the rental unit. As such, I cannot say as to whether the interior of the rental unit was left in such a condition by the tenant as to require cleaning. Similarly, I cannot say what condition the carpet was in at the end of the tenancy. Accordingly, I decline to award the landlord any amount for either the cleaning of the rental unit or the carpet steam cleaning.

The landlord did, however, provide photographs showing the condition of the exterior of the rental unit and the garage. Significant garbage and debris were left on the patio and at the back of the rental unit by the tenant. I accept that the landlord reasonably incurred costs to remove these items. Similarly, the tenant abandoned a great deal of personal possessions in the garage. I accept the landlord's evidence that the tenant did not inform him that she was storing them there to donate to charity (in any event, this is not something that she would have been entitled to do). I find that the landlord acted reasonably to have them disposed of.

Accordingly, I find that the landlord is entitled to recover the full amount of the cost for garbage removal (\$450).

2. Tenant's Claim

a. Lower Unit Deposit

As stated above, the tenant bears the onus to prove that she paid a security deposit for the Lower Unit to the landlord. She has provided no corroborating evidence supporting this assertion. In the absence of any form of corroboration, and as the landlord denied the allegation, I find that the tenant has failed to discharge her evidentiary burden. I decline to order that the landlord pay any amount in connection with this portion of the tenant's claim.

b. Cleaning Costs at the start of the tenancy

The tenant submitted no documentary evidence as to the condition of the rental unit at the start of the tenancy. I accept that the tenant performed some cleaning at the start of the tenancy, but I am unable to say how much was necessary to bring the rental unit to a reasonable level of repair. As such, I find that the tenant has failed to discharge her evidentiary burden to prove the necessity of cleaning the rental unit for two weeks. I decline to order that the landlord pay any amount in connection with this portion of the tenant's claim.

c. Utilities Re-imbursement

I find that, per the Written Agreement, the tenant is responsible for paying the costs of the Utilities for both the rental unit and the Lower Unit. I do not find that such a term is unconscionable, as the tenant's monthly rent was reduced from \$1,400 (per the Oral Agreement) to \$1,300. I find that the parties agreed to streamline their arrangement under the Oral Agreement (that is, having the tenant deduct 40% of each Utility bill from her monthly rent payment). As such, I find the tenant is not entitled to recover any portion of the cost of the Utilities from March 2019 to the end of the tenancy.

Contrary to the assertion of the tenant, I do not find that the landlord was charging the occupant of the lower unit for utilities. I find that the tenancy agreement for the lower unit states that utilities are included in the monthly rental price. I have no evidence before me to suggest that the amount of monthly rent for the Lower Unit (\$750) is above the market rate for a similar unit without utilities provided (if it were, this may suggest that the landlord was charging the lower unit for utilities).

Under the Oral Agreement, the tenant was permitted to deduct the 40% of the cost of the Utilities from her monthly rent. The tenant gave no evidence that she had failed to do so. She provided no evidence as to the amounts of rent she paid at any point prior to March 2019. As such, I cannot say if she deducted the cost of Utilities from her monthly rent payments (in accordance with the Oral Agreement) or not. Accordingly, I find that

she has failed to discharge her evidentiary burden. I decline to order the landlord pay the tenant any amount representing reimbursement for the cost of Utilities for the Lower Unit.

### 3. Inspection Reports

No condition inspection walkthrough or report was done at the start or at the end of the tenancy. Sections 23, 24, 35 and 36 of the Act sets out the obligations of the parties regarding such reports and the consequences.

#### **Condition inspection: start of tenancy or new pet**

23(4) The landlord must complete a condition inspection report in accordance with the regulations.

#### **Consequences for tenant and landlord if report requirements not met**

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

[...]

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

#### **Condition inspection: end of tenancy**

35 (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

#### **Consequences for tenant and landlord if report requirements not met**

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*]

I find that, in accordance with sections 24(2)(c) and 36(2)(a) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at the start of the tenancy and failure to offer two opportunities to the tenant to complete a condition inspection report at the end of the tenancy.

The effect of this extinguishment is set out at Residential Tenancy Policy Guideline 17:



C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

- whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the security deposit. As the landlord's right to claim against the security deposit is extinguished, the tenant is entitled to receive double the amount of the security deposit from the landlord.

Accordingly, I order that the landlord pay the tenant an amount equal to double the security deposit ( $\$575 \times 2 = \$1150$ ). As the landlord has already returned the security deposit to the tenant, that amount should be credited against this penalty.

As both parties were partially successful in their applications, I decline to order that either reimburse the other the filing fee.

### **Conclusion**

I order that the tenant pay the landlord \$425, representing the following:

Unpaid November rent	\$550
Garbage removal fees	\$450
x2 Security Deposit Credit (less the return of the security deposit)	-\$575
<b>Total</b>	<b>\$425</b>

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 11, 2020

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Residential Tenancy Branch