



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 23, 2019 the Dispute Resolution Package and all the evidence the Landlord submitted to the Residential Tenancy Branch in November of 2019, was sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. The Landlord stated that the Tenant's service address was provided to the Landlord in Supreme Court of British Columbia documents which were served to her, in which the Landlord is named as a respondent and the Tenant is named as an applicant.

In the absence of evidence to the contrary I find that these documents have been served to a forwarding address provided by the Tenant, in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the aforementioned documents have been served to the Tenant, the hearing proceeded in the absence of the Tenant and this evidence was accepted as evidence for these proceedings.

The Landlord and her agent were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The participants at the hearing each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began in 2019;
- the tenancy ended on September 01, 2019;
- the Tenant agreed to pay monthly rent of \$1,755.00 by the first day of each month for the duration of the tenancy; and
- the Tenant paid a security deposit of \$800.00.

The Landlord applied for unpaid rent, in the amount of \$7,350.00. The Landlord stated that she was previously awarded compensation for this amount of unpaid rent. A copy of the monetary Order relating to this award was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$535.00, for cleaning the rental unit. The Landlord submitted photographs, which the Landlord stated accurately reflects the condition of the rental unit at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$535.00, for repairing a window and door that were damaged during the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$180.00, for replacing keys that were not returned at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$4,180.00, for painting the rental unit. The Agent for the Landlord stated that the unit needed painting because the unit smelled of smoke and someone had written on the walls in various locations. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord stated that rental unit was previously painted in May of 2018.

The Landlord is seeking compensation, in the amount of \$5,000.00, for bailiff fees. The Landlord stated that she was granted an Order of Possession on August 16, 2019. The Landlord could not recall how or when this Order of Possession was served to the Tenant. She stated that she had to hire a bailiff because the Tenant did not vacate the rental unit after being served with the Order of Possession.

The Landlord stated that on September 01, 2019 the Tenant's property was removed from the rental unit by a bailiff. The Landlord submitted a document that shows she requested the services of a bailiff on August 26, 2019.

The Landlord stated that she submitted an invoice showing she paid \$5,000.00 for bailiff services. I was unable to find such a receipt in the evidence submitted by the Landlord.

### Analysis

As the Landlord has been granted compensation for unpaid rent, in the amount of \$7,350.00, at a previous dispute resolution proceeding, I find that I do not have jurisdiction to reconsider that claim. The current application for a monetary Order for unpaid rent of \$7,350.00 is dismissed.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$535.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair damage that occurred during the tenancy prior to vacating the rental unit. I therefore find that the Landlord is entitled to compensation for the cost of repairing a door and window that were damaged during the tenancy, which was \$535.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(b) of the *Act* when the Tenant failed to return all of the keys to the rental unit. I therefore find that the Landlord is entitled to compensation for the cost of replacing the keys, which was \$180.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair walls that were damaged during the tenancy, prior to vacating the rental unit. I find that the Landlord is entitled to compensation for some of the cost of repainting the walls in the rental unit.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the rental unit was previously painted in May of 2018, which is approximately 9 months prior to the end of the tenancy. I therefore find that the paint in the living room had depreciated by 9/48 by the time this tenancy ended, which is approximately 19%, and that the Landlord is entitled to 81% of the cost of repainting the living room, which in these circumstances is \$3,385.80.

Typically, I would find that a tenant is obligated to pay for the costs of a bailiff when a landlord is required to hire a bailiff to recover legal possession of a rental unit. Even if I was satisfied that the Landlord needed to hire a bailiff to recover legal possession of the rental unit from the Tenant, I would dismiss the Landlord's application to recover the costs of hiring a bailiff in these circumstances, because the Landlord did not submit any documentary evidence to corroborate her claim that it cost \$5,000.00 to hire a bailiff.

When documentary evidence, such as an invoice, is available or could be available with reasonable diligence, I find that a landlord should submit that evidence in support of a claim for compensation. As the Landlord submitted no documentary evidence to corroborate her claim that she paid \$5,000.00 to a bailiff, I dismiss the Landlord's application for \$5,000.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$4,555.80, which includes \$535.00 for cleaning; \$535.00 for repairing a window and door; \$3,385.80 for painting, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$800.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$3,755.80. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 31, 2020

---

Residential Tenancy Branch