



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL MNDCL FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 30, 2019 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on December 31, 2019 to the home address of the tenant, as the tenant was subletting the rental unit and was residing elsewhere the landlord had been previously during the tenancy to pick up the rent cheques. The registered mail tracking number has been included on the style of cause for ease of reference. According to the Canada Post online registered tracking website, the registered mail package was mailed December 31, 2019 and was marked as "unclaimed" and "returned to sender". Section 90 of the Act states that documents served by registered mail are deemed served five days after they are mailed and as a result, I deem the tenant served as of January 5, 2020.

Given the above, I find this application to be unopposed by the tenant as I find the tenant was deemed served and did not attend the hearing. As a result, the hearing continued without the tenant present.

### Preliminary and Procedural Matters

The landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be mailed to the tenant by regular mail as the landlord did not have an email address for the tenant.

The landlord stated during the hearing that they forgot to claim for paintings costs, and the landlord was reminded of Rule 2.9 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which states that a claim cannot be divided. As a result, I do not grant the landlord liberty to apply for painting costs as I find that would constitute dividing of this claim before me.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2017. The monthly rent was \$2,350.00 per month and the tenants were eventually evicted by way of an order of possession and Writ of Possession enforced by bailiffs.

The landlord's monetary claim of \$30,900.00, which I find contained an adding error, actually totals \$29,866.03 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent / loss of rent	\$11,800.00
2. Bylaw ticket/code offence A	\$175.00
3. Unpaid utility bill	\$1,113.00
4. Bylaw ticket/code offence B	\$200.00
5. Disposal costs x 3	\$1,831.62
6. Labour fees for trash removal	\$2,000.00
7. Property manager fees	\$3,240.00
8. Bailiff fees	\$4,403.41
9. Replace flooring labour fee	\$3,038.00

10. Flooring materials	\$2,065.00
<b>TOTAL</b>	<b>\$29,866.03</b>

Regarding item 1, the landlord has claimed \$11,800.00 for unpaid rent and loss of rent for the following months:

April 2018 - \$50.00 rent owing  
 May 2018 - \$2,350.00 rent owing  
 June 2018 - \$2,350.00 rent owing  
 July 2018 - \$2,350.00 rent owing  
 August 2018 - \$2,350.00 rent owing  
 September 2018 - \$2,350.00 rent owing

The landlord testified that the tenants were forcibly removed from the rental unit after failing to comply with the Order of Possession served upon them, resulting in court-approved bailiffs to be hired to enforce the Writ of Possession issued by the Supreme Court. The landlord stated that the bailiffs removed the tenants as of October 1, 2018.

Regarding item 2, the landlord has claimed \$175.00 for a fine issued by the local government against the owner of the property dated February 20, 2018 due to “non-permitted storage”, which the landlord stated was excessive junk on the rental property stored by the tenant. A copy of the ticket was submitted in evidence in support of this portion of the landlord’s claim.

Regarding item 3, the landlord has claimed \$1,113.00 in unpaid utility bills. The landlord presented the tenancy agreement which supports that water, electricity, sewer, garbage, heat, recycling and gas were not included in the monthly rent. In support of this item, the landlord submitted the utility bill which supports that \$1,113.00 was owed for unpaid water, sewer, garbage and recycling bills. The bill is dated February 13, 2018 and covers a period where the tenant was occupying the rental unit.

Regarding item 4, the landlord has claimed \$200.00 for a fine issued by the local government against the owner of the property dated March 26, 2018 due to storage of discarded debris outside premises and that compliance has not been met as to the bylaw, which the landlord stated was excessive junk on the rental property stored by the tenant. A copy of the ticket was submitted in evidence in support of this portion of the landlord’s claim.

Regarding item 5, the landlord has claimed \$1,831.62 for three disposal bills. The landlord presented photos of the trash left behind by the tenant and the landlord testified that there was so much trash left in the rental unit that they filled three dumpsters and that the amount claimed is just for the cost of the three dumpsters and not the labour to fill the dumpsters. The landlord also presented the disposal bills which total the amount being claimed. The photos show a large amount of garbage in the rental unit and appears to be items of no value including a soiled mattress and soiled clothing and the landlord stated that all five rooms were filled with junk and that the bailiffs and a team of movers took an entire day to remove all the belongings and that the landlord took three dumpsters to fill up all the garbage.

Regarding item 6, the landlord has claimed \$2,000.00 that the landlord stated they paid in cash as labour costs to remove all the garbage left behind in the rental unit.

Regarding item 7, the landlord has claimed \$3,240.00 for property management fees, which was dismissed during the hearing, as I find the landlord's decision to hire a property manager is not a cost that is recoverable through the tenant and was a landlord decision. As such, this item was dismissed without leave to reapply.

Regarding item 8, the landlord has claimed \$4,403.41 for the bailiff fees and submitted an invoice dated October 15, 2018 from a court bailiff service company. The invoice matches the amount claimed by the landlord and includes moving costs, locksmith and the Supreme Court file number for the Writ of Possession that the bailiffs enforced due to the tenants refused to move based on the Order of Possession.

Regarding item 9, the landlord has claimed \$3,038.00 for the labour cost to replace damaged flooring. The landlord confirmed there was no incoming or outgoing Condition Inspection Report completed. The landlord also stated that they estimated the carpets were three years old at the start of the tenancy in 2017, which makes the flooring four years by the end of the tenancy. The landlord referred to a photo submitted in evidence, which showed that the carpet was stained at the end of the tenancy. The landlord stated that they purchased the home in March 2017 and that the carpets were in good condition at the start of the tenancy.

The landlord testified that the carpets were replaced with laminate flooring and that the tenants had pets in the rental unit. The landlord stated that all carpets were damaged due to all the trash in the rental unit, which was a large volume of trash. The landlord submitted an invoice in the amount of \$3,038.00 which includes labour for the flooring, baseboards, 14 stairs, two deliveries, reducers and T mouldings. The landlord also

provided a photo of one bedroom where the carpet had been removed due to the damage to the carpets and that they could not be cleaned.

Regarding item 10, the landlord has claimed for the material cost for the flooring, and submitted credit card statements which supports two amounts, \$1,580.53 and \$467.55, which together total \$2,048.08, which I find is \$16.92 less than the \$2,065.00 amount being claimed for this item, which I will address further below.

The landlord is also seeking the cost of the filing fee in the amount of \$100.00.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 in sections 7 and 67 of the *Act*. Accordingly, 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 is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/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 what is reasonable to minimize the damage or losses that were incurred.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant.

**Item 1** - The landlord has claimed \$11,800.00 for unpaid rent and loss of rent as noted above. I accept the landlord's undisputed testimony that the tenants were forcibly removed from the rental unit after failing to comply with the Order of Possession served upon them, resulting in court-approved bailiffs to be hired to enforce the Writ of Possession issued by the Supreme Court. I also accept that the tenants were removed by bailiffs on October 1, 2018. Therefore, I find the tenants breached section 26 of the Act which requires tenants to pay rent on the date that it is due and that in the matter before me, monthly rent was \$2,350.00 per month and due on the first day of each month. I find the landlords have met the burden of proof and I grant the landlord **\$11,800.00** in unpaid rent and loss of rent as a result.

**Item 2** – I have considered the \$175.00 fine issued by the local government for “non-permitted storage”, which I find the tenants are liable for as they were occupying the rental unit on the date that the ticket was issued. Therefore, I grant the landlord **\$175.00** as claimed as I find the tenants are responsible for violating the local bylaws by storing excessive junk on the property as claimed by the landlord.

**Item 3** - The landlord has claimed \$1,113.00 in unpaid utility bills. Based on the tenancy agreement and the bill presented, I find the tenants failed to pay the required utilities which were not included in the monthly rent. Therefore, I find the tenants are liable for the full amount claimed and I grant the landlord **\$1,113.00** as claimed for this item.

**Item 4** – Consistent with my finding for item 2 above, I have considered the \$200.00 bylaw fine by the local government dated March 26, 2018 due to storage of discarded debris outside premises and I accept the landlord's testimony that the tenants were storing excessive junk on the rental property resulting in the fine. Therefore, I grant the landlord **\$200.00** as claimed as I find the tenants are responsible for violating the local bylaws by storing excessive junk on the property as claimed by the landlord.

**Item 5** - The landlord has claimed \$1,831.62 for three disposal bills. I have reviewed the invoices, photos and section 37(2)(a) of the Act, which applies and states:

### **Leaving the rental unit at the end of a tenancy**

**37(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,  
[Emphasis added]

I have reviewed the invoices and photo evidence and find that the tenants breached section 37(2)(a) of the Act and failed to leave the rental unit reasonably clean and left a large volume of garbage in the rental unit. As a result, I find the landlord has met the burden of proof and I award the landlord **\$1,831.62** as claimed for this portion of their claim.

**Item 6** – Consistent with item 5, I also grant the landlord **\$2,000.00** for labour costs to remove all of the garbage left behind in the rental unit by the tenants. I find the landlord has met the burden of proof for this item based on the photo evidence and the undisputed testimony of the landlord.

**Item 7** – This item was dismissed during the hearing as I find the landlord made the decision to hire a property manager and that this cost is the responsibility of the landlord and not the tenant. Therefore, I find the landlord has not met parts 1, 2 and 4 of the four-part test for damages or loss described above. Accordingly, this item was dismissed without leave to reapply due to insufficient evidence.

**Item 8** – When tenants fail to vacate based on an Order of Possession, the Act allows for landlords to claim for the bailiff costs paid to apply for a Writ of Possession and to have the Writ of Possession from the Supreme Court enforced by a court-approved bailiff. Therefore, by overholding the rental unit, I find the tenants are liable for the full amount of **\$4,403.41** claimed for the bailiff fees and I award the landlords the full amount as claimed as a result.

**Item 9** - The landlord has claimed \$3,038.00 for the labour cost to replace damaged flooring. Although there was no incoming or outgoing Condition Inspection Report completed, I accept the landlord's undisputed estimate that the carpets were three years old at the start of the tenancy in 2017, which makes the flooring four years by the end of the tenancy. The landlord referred to a photo submitted in evidence, which showed that the carpet was stained at the end of the tenancy. The landlord stated that they purchased the home in March 2017 and that the carpets were in good condition at the start of the tenancy.

Firstly, the landlord is cautioned to comply with section 23 and 35 of the Act in the future, which require that an incoming (section 23) and outgoing (section 35) inspection is completed in writing under the Act.

Secondly, RTB Policy Guideline 40 – Useful Life of Building Elements states that carpet has a useful life of 10 years. Therefore, I find the carpets were 40% depreciated in value by the time the tenancy ended based on the undisputed testimony of the landlord. Therefore, I will apply 40% depreciation to the labour cost of \$3,038.00. 40% of \$3,038.00 is \$1,215.20 and as a result, I award the landlord **\$1,822.80** for this item which has 40% deducted due to depreciation in accordance with Policy Guideline 40. I find the landlord has met the burden of proof for the amount of \$1,822.80.

**Item 10** - The landlord has claimed for the material cost for the flooring, and submitted credit card statements which supports two amounts, \$1,580.53 and \$467.55, which together total \$2,048.08, which I find is \$16.92 less than the \$2,065.00 amount being claimed for this item. Consistent with my finding for item 9, I will apply the same 40% depreciation for the material cost of the flooring to the amount claimed of \$2,048.08. 40% of \$2,048.08 is \$819.23 and as a result, I award the landlord **\$1,228.85** for this item which has 40% deducted due to depreciation in accordance with Policy Guideline 40. I find the landlord has met the burden of proof for the amount of \$1,228.85.

As the landlord's application has merit, I grant the landlord **\$100.00** for the cost of the filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord's application is successful as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid rent / loss of rent	\$11,800.00
2. Bylaw ticket/code offence A	\$175.00
3. Unpaid utility bill	\$1,113.00
4. Bylaw ticket/code offence B	\$200.00
5. Disposal costs x 3	\$1,831.62
6. Labour fees for trash removal	\$2,000.00
7. Property manager fees	dismissed
8. Bailiff fees	\$4,403.41
9. Replace flooring labour fee	\$1,822.80
10. Flooring materials	\$1,228.85
11. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$24,674.68</b>



I find the tenant breached section 26 of the Act by failing to pay rent as claimed by the landlord. I also find the tenant breached section 37(2)(a) of the Act which applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(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,  
[Emphasis added]

I have reached this finding by reviewing the CIR, photo evidence and accept the testimony of the landlord that the rental unit was left dirty, needed the cleaning being claimed and that the carpets were damaged beyond cleaning or repair. I find the costs to be reasonable and I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord of **\$24,673.68**.

**I caution** the tenant to comply with sections 26 and 37(2)(b) of the Act in the future.

Conclusion

The landlord's application is mostly successful.

The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$24,673.68. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to the landlord and sent by regular mail to the tenant. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 5, 2020