



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL, MNDCL, MNDL, FFL**

### 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 recover the filing fee for this application pursuant to section 72.

The landlord CM attended for the landlords (“the landlord”) 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 ten 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 the Application for Dispute Resolution by sending the documents to the tenant by email. The landlord submitted a copy of the email dated May 22, 2020 and attached documents. The landlord testified that the email address was provided by

the tenant and routinely used by the parties to correspond about tenancy matters. Pursuant to The Director's Order of May 30, 2020, I find the tenant is deemed to have received the email 3 days after sending, that is on May 25, 2020.

### *Preliminary Issue*

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit of \$1,000.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit of \$1,000.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

As stated above, section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's applications to allow the landlord to request that the security deposit of \$1,000.00 be applied to any monetary award.

### 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 recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The 1-year fixed term tenancy began on May 1, 2019 for monthly rent of \$2,000.00 payable on the first of the month. The tenant provided a security deposit of \$1,000.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement which required the tenant to pay for electricity.

The landlord testified that the tenant vacated the unit on May 1, 2020 and did not pay rent for the month of April 2020. The landlord submitted a ledger in support of the claim showing the balance owing of \$2,000.00.

The landlord testified that no condition inspection was conducted on moving in or moving out.

The landlord stated that when the tenants vacated, the unit required cleaning, the lock and fobs required replacing, the strata move-out fee was not paid, and the electricity bill was unpaid.

The landlord submitted photographs in support of the claim that the unit needed cleaning. The landlord submitted supporting receipts for all expenses except the replacement of fobs which the landlord estimated would cost \$160.00 at the end of the State of Emergency.

The landlord testified that the tenant has not provided their forwarding address to the landlord. The landlord brought this application on May 22, 2020.

The landlord claimed as follows:

ITEM	AMOUNT
Outstanding rent	\$2,000.00
Electricity bill	\$597.88
Cleaning	\$175.00
Lock replacement	\$25.45
Fobs	\$160.00
Move out fee	\$75.00
<b>TOTAL CLAIM</b>	<b>\$3,033.33</b>

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total Award Requested (above)	\$3,033.33
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,000.00)
<b>TOTAL MONETARY ORDER REQUESTED</b>	<b>\$2,133.33</b>

### Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

...

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

*1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?*

### *Landlord's Claim for Rent*

Generally speaking, rent must be paid in full and on time.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act and the agreement, unless the tenant has a right to deduct all or part of the rent.

The section 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.***

The landlord's testimony was supported in all material aspects by documentary evidence.

I find the landlord has met the burden of proof that the tenant did not pay rent for the last month of the tenancy, April 2020. I find the tenant failed to comply with the Act and tenancy agreement.

### *Outstanding Electricity*

The tenant was required under the agreement to pay for electricity provided to the unit. I find the tenant failed to do so and an outstanding amount owing was paid by the

landlord. The landlord submitted a copy of the outstanding invoice in support of the claim.

I find the tenant failed to comply with the Act and tenancy agreement with respect to this aspect of the claim.

### *Cleaning*

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

In hearing the testimony of the landlord, supported by the photographs, I find the tenant failed in the tenant's obligation under section 37(2) with respect to cleaning.

I have considered the photographs and receipts submitted by the landlord and I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2).

### *Remaining claims*

I accept the landlord's testimony supported by the documentary evidence that the tenant was required to return the keys and fobs to the landlord and pay a moving out expense which the tenant did not do.

I find the landlord has met the burden of proof that the tenant failed to comply with the tenant's obligation under the agreement and Act to return the key and fobs as well as pay the move-out fee.

### *2. Did the loss or damage result from non-compliance?*

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's

loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

#### *Landlord's claim for outstanding rent*

Based on the landlord's testimony, I find that the landlord's loss of rent would not have occurred *but for* the tenant's failure to comply with the Act and the agreement.

#### *Cleaning*

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

In hearing the testimony of the landlord, supported by the invoice and the photographs, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred the expenses claimed for cleaning but for the tenant's breach of their obligations.

#### *Remaining claims*

In hearing the testimony of the landlord, supported by the invoices, I find that the landlord would not have incurred the expenses claimed for the lock, fob replacement and moving out fee, but for the tenant's breach of their obligations.

#### *3, Has applicant proven amount or value of damage or loss?*

I find the landlord has established in the landlord's testimony supported in most material respects that the landlord has incurred the expenses claimed. I accept the landlord's testimony regarding the expected expense for the fob replacement.

I find the landlord has met the burden of proof that the monthly rent was \$2,000.00 and the outstanding utility bill was \$597.88. I find the landlord has proven all of the amounts

claimed in this regard.

I have viewed the photographs and accept the landlord's testimony that the cleaning expense is reasonable in the circumstances and the landlord incurred the expense claimed.

Considering the above reasonable estimation and the invoices submitted, I find the landlord has met the burden of proof with respect to the amount of value of the damage or loss claimed with respect to the remaining claims.

*4. Has applicant done whatever is reasonable to minimize damage or loss?*

In considering the landlord's testimony, I find that they took reasonable steps to minimize the damage or loss by carrying out the cleaning, paying the electricity and strata moving out account, and by incurring the lock and fob expenses (the latter anticipated at the end of the State of Emergency).

I find the landlord made reasonable efforts to have these matters attended to in a cost and time efficient manner.

*Conclusion*

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$2,000.00
Lock replacement	\$25.45
Cleaning	\$175.00
Move out fee (strata expense)	\$75.00
Electricity bill	\$597.88



Fobs	\$160.00
<b>TOTAL AWARD</b>	<b>\$3,033.33</b>

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order as follows:

ITEM	AMOUNT
Total Award Requested (above)	<b>\$3,033.33</b>
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,000.00)
<b>TOTAL Monetary Order</b>	<b>\$2,133.33</b>

### Conclusion

I hereby grant the landlord a monetary order in the amount of **\$2,133.33**, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: June 15, 2020

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Residential Tenancy Branch