



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNDC-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord, her interpreter, and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

The tenant said he did not receive the landlord's evidence until the day prior to the hearing, which is a violation of the Rules as to the service of evidence timeline. I ultimately decided not to adjourn the hearing, and to continue the hearing, hearing affirmed testimony from the parties. I note that my Decision was not impacted by the landlord's delay in serving the tenant her evidence in a timely manner.

I also note that the tenant has made an application for dispute resolution, which is set for hearing in October before another arbitrator.

### Issue(s) to be Decided

Has the landlord established that she is entitled to receive monetary compensation from the tenant and to recovery of the filing fee?

### Background and Evidence

The undisputed evidence is that the tenancy began on September 7, 2019, ended on April 30, 2020, monthly rent was \$990, due on the 15<sup>th</sup> day of the month, and the tenant paid a security deposit of \$600, which the landlord has kept, having made this claim against it. Filed into evidence is a copy of the written tenancy agreement and the addendum.

The total monetary claim of the landlord is as follows:

| ITEM DESCRIPTION              | AMOUNT CLAIMED |
|-------------------------------|----------------|
| 1. Table damage               | \$600          |
| 2. Late fees for monthly rent | \$950          |
| 3. Cleaning                   | \$200          |
| 4. Utilities                  | \$180          |
| 5. Filing fee                 | \$100          |
| <b>TOTAL</b>                  | <b>\$2,030</b> |

The landlord confirmed that there was not a move-in or move-out condition inspection report (CIR).

In support of her application, the landlord provided the following evidence:

#### *Table damage –*

The landlord submitted that the tenant damaged a high-quality dining table, and that she was informed by a worker that the table material does not split naturally, indicating that the tenant used force to damage the table.

The landlord submitted photographs of the table.

In response to my inquiry as to proof of the amount for the claim, the landlord said that she hired two handymen to evaluate the damage. The landlord submitted that she did not have an estimate, but that she could tell the damage was over \$600.

*Cleaning –*

The landlord submitted that the tenant owes \$200 for cleaning by the terms in the addendum to the tenancy agreement. The landlord said she has not paid for cleaning or the repair to the table, as she was waiting for the outcome of this hearing.

*Late fees –*

The landlord submitted that the tenant paid the monthly rent late on 19 separate occasions, and that he owes a \$50 fine for each occurrence. The landlord referred to a clause in the addendum to the tenancy agreement to support her claim.

*Utilities –*

The landlord submitted that the tenant owes a share of the utilities that exceeds \$350, which is shared with the other tenants. This clause is in the addendum to the tenancy agreement.

*Tenant's response –*

The tenant said that the landlord never attempted to conduct a move-in or move-out inspection with him.

The tenant denied damaging the table and that he cleaned the entire rental unit prior to his departure which took two days. The tenant submitted that he thoroughly washed the carpets as well.

The tenant submitted that he never made late payments of rent, and always paid early, pointing out that the monthly rent was due on the 15<sup>th</sup> day of the month, not the first as claimed by the landlord.

The tenant said he does not know what the landlord is claiming for with the utilities, as there is no proof of her claim.

The tenant's relevant evidence included a written statement, a bank record and photographs of the rental unit and table at the end of the tenancy.

In response to my inquiry, the tenant said he provided his written forwarding address to the landlord on April 30, 2020.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

### 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 was 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 did what was reasonable to minimize the damage or losses that were incurred.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations.

It is important to note that in this case, the landlord confirmed there was not a move-in or move-out condition inspection or report, nor was there proof that there was an inspection of the rental unit with the tenant at the beginning or end of the tenancy, as is the obligation of the landlord pursuant to sections 23 and 35 of the Act.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

*Table damage; cleaning –*

In this case, the landlord did not conduct a move-in or move-out inspection with the tenant. Additionally, the landlord only provided undated, up-close photos of the alleged damage to the table.

An inspection report is important as it allows both the landlord and the tenant to comment on the condition of the rental unit. Without that document, I could not assess the condition at the end of the tenancy compared with the beginning of the tenancy.

Therefore, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographs taken at the end of the tenancy were of no probative value as there were no corresponding photographs from the beginning of the tenancy and as there was no proof of the dates the photographs were taken or if the tenants were present.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenant for damage to the table. I also find the landlord failed to provide evidence to show the rental unit required cleaning at the end of the tenancy. I reviewed the tenant's photographs and found them to document that the tenant reasonably and properly cleaned the rental unit.

Due to the above noted insufficient and inconsistent evidence, I dismiss the landlord's claim for table damage and cleaning.

*Late fees –*

I dismiss this portion of the landlord's claim in its entirety.

The landlord is not permitted under the Act or the Residential Tenancy Regulation to charge any kind of "fine" for late payments. Additionally, the landlord is attempting to charge the tenant for payments not made on the first day of the month, which is in violation of the written tenancy agreement where the monthly rent is due on the 15<sup>th</sup> day of the month.

The evidence shows that the tenant made his monthly rent payments by the 15<sup>th</sup> day of each month.

*Utilities -*

The written tenancy agreement shows that the monthly rent includes water, electricity, heat and internet.

The addendum to the written tenancy agreement has a vague clause, which attempts to require the tenant to share any costs when the utilities go above \$350. The addendum does not indicate the percentage of the shared amount.

I find the term in the addendum about shared costs conflicts with the written tenancy agreement, is vague on its terms, and therefore, unenforceable.

I therefore dismiss the landlord's claim for utilities.

For all the reasons listed above, I find the landlord submitted insufficient evidence to support any part of her application, and dismiss the landlord's application, including her request to recover the filing fee, without leave to reapply.

As I have dismissed the landlord's monetary claim against the tenant where she is seeking to retain the tenant's security deposit, I order the landlord to return the tenant's security deposit of \$600, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$600.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

*Information to the parties –*

I remind the parties that if they have submitted evidence for this hearing, the evidence will not be transferred for the hearing on the tenant's application for dispute resolution. The parties were informed if they wanted any evidence to be considered at the hearing on the tenant's application, they must submit it specifically for that file. This includes a copy of this Decision, if they so choose.

The parties are reminded to attend the hearing on the tenant's application, despite this Decision, as the tenant may be entitled to further compensation not addressed in this Decision.

*Cautions to the landlord –*

The landlord was advised during the hearing that many terms in the addendum and in her requirements in the written tenancy agreement were in conflict with the Residential Tenancy Act, and are therefore not enforceable. I will not list all the unenforceable terms, but note that the landlord charged the tenant more than the allowable amount for the security deposit, charged the tenant the first and last month's rent at the beginning of the tenancy, required the tenant to pay the first \$50 for appliance repairs, and provided that the tenant pay a \$50 "fine" for a late payment of rent.

I cautioned the landlord that if she continues carrying on business as a landlord, she should become familiar with her obligations under the legislation, the Residential Tenancy Act (Act). If the landlord should have any questions about her obligations and requirements under the Act, she is encouraged to speak with staff at the Residential Tenancy Branch (RTB).

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$600 and the tenant is granted a monetary order in the amount of \$600 in the event the landlord does not comply with this order.

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: July 14, 2020

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Residential Tenancy Branch