



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on March 12, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by D.S., an agent. T.E. attended the hearing and identified herself as the Executor of the Estate of the deceased Tenant, M.B. T.E. was accompanied by L.S. and J.S., witnesses. All in attendance provided affirmed testimony.

On behalf of the Landlord, D.S. confirmed that the Notice of Dispute Resolution Proceeding package was served on T.E. by registered mail. T.E. acknowledged receipt. In addition, T.E. testified the evidence upon which she intended to rely was served on the Landlord by registered mail. No issues were raised during the hearing with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

## Preliminary and Procedural Matters

Policy Guideline #43 states:

*Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.*

*The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.*

*The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.*

[Reproduced as written.]

In this case, T.E. identified herself as the Executor of the Estate of the deceased Tenant, M.B. Accordingly, pursuant to Policy Guideline #45 and section 64 of the *Act*, I amend the Application to reflect the appropriate name of the Respondent.

## Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

## Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on October 15, 2017. In a hand-written letter dated February 10, 2020, the Landlord was advised by family members that the Tenant was no longer residing in the rental unit as she had moved into hospice care. The letter indicated the rental unit would be vacated

by February 29, 2020. T.E. confirmed the Tenant died on February 26, 2020. During the tenancy, rent in the amount of \$964.00 per month was due on or before the first day of each month. The Tenant paid a security deposit in the amount of \$455.00, which the Landlord holds.

The Application discloses a claim for \$1,700.16. First, the Landlord claimed \$964.00 for unpaid rent due on March 1, 2020. However, D.S. testified the Landlord was able to re-rent the unit from March 16-31, 2020 for \$475.00 leaving \$489.00 outstanding. T.E. agreed to pay this amount.

Second, the Landlord claimed \$55.98 to replace a Weiser deadbolt lock that was necessary because the door had been damaged by the fire department on November 11, 2019. T.E. agreed to pay this amount.

Third, the Landlord claimed \$40.18 for a metal door guard needed to secure the door after it was damaged by the fire department on November 11, 2019. T.E. agreed to pay this amount.

Fourth, the Landlord claimed \$105.00 for carpet cleaning. The Landlord testified that the carpet was new at the beginning of the tenancy and was stained at the end of the tenancy. Further, the Landlord relied on paragraph 23 of the tenancy states: "if the carpets...are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy."

In reply, E.T. acknowledged the carpets were new at the beginning of the tenancy but testified that her sister was a "fastidious". E.T. also testified that she did not observe any stains on the carpet.

Fifth, the Landlord claimed \$120.00 for general cleaning of the rental unit including the fridge, stove, floors, light fixtures, and cupboards. The Landlord submitted photographs depicting liquid collected at the bottom of the fridge, dust and dirt under the fridge, the inside of the oven, the stove top, dust and dirt under the stove, and food splatter on the baseboards. The Landlord also submitted an invoice dated March 5, 2020 in support.

In reply, E.T. acknowledged she did not clean thoroughly but that she did her best considering her sister had recently died.

Sixth, the Landlord claimed \$25.00 to take down, wash, and rehang the drapes which were stained. The Landlord submitted an invoice dated March 5, 2020 in support.

In reply, T.E. testified that she did not recall seeing any stains and noted there was no photograph of the alleged stains in the Landlord's evidence.

Seventh, the Landlord claimed \$50.00 to remove hooks, fill nail holes, and do touch-up painting in the rental unit. The Landlord submitted photographs depicting two stick-on hooks, a nail hole, and bathroom mirrors that she testified were not there at the beginning of the tenancy. The Landlord submitted an invoice dated March 5, 2020 in support.

In reply, T.E. testified the stick-on hooks are easily removed, that nail holes were minimal, and that the bathroom mirrors were present when the Tenant moved into the rental unit. L.S. testified that she recalled seeing and commenting on the mirrors shortly after the Tenant moved in.

Eighth, the Landlord claimed \$240.00 to advertise the rental unit for rent. Although D.S. acknowledged receipt of the letter dated February 10, 2020, described above, she testified the Landlord was not provided with a full month's notice. The Landlord submitted invoices dated February 29, March 31, and April 30, 2020 in support.

In reply, T.E. testified that notice to end the tenancy was provided in the letter dated February 10, 2020, notwithstanding the incorrect effective date.

Finally, the Landlord claims \$100.00 in recovery of the filing fee and requests an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 case, the burden of proof is on the Landlord to prove the existence of the damage or 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.

With respect to the Landlord's claim for \$964.00 for unpaid rent, the Landlord reduced this aspect of the Landlord's claim to \$489.00. T.E. agreed to pay the amended amount claimed. I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$489.00.

With respect to the Landlord's claim for \$55.98 to replace a Weiser deadbolt lock, T.E. agreed to pay the amount claimed. I find the Landlord is entitled to a monetary award for the deadbolt lock in the amount of \$55.98.

With respect to the Landlord's claim for \$40.18 for a metal door guard, T.E. agreed to pay the amount claimed. I find the Landlord is entitled to a monetary award for the metal door guard in the amount of \$40.18.

With respect to the Landlord's claim for \$105.00 for carpet cleaning, I find the Landlord is entitled to the relief sought. I accept that the carpet required cleaning after a tenancy that exceeded two years, and that the tenancy agreement provided for professional cleaning at the end of the tenancy. I find the Landlord is entitled to a monetary award for carpet cleaning in the amount of \$105.00.

With respect to the Landlord's claim for \$120.00 for general cleaning, section 37(1) of the *Act* confirms a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, photographic evidence of the interior of the rental unit confirm it was not left reasonably clean. T.E. acknowledged that the rental unit may not have been cleaned thoroughly. The Landlord's claim was supported by an invoice in the amount claimed. I find the Landlord is entitled to a monetary award for general cleaning in the amount of \$120.00.

With respect to the Landlord's claim for \$25.00 to take down, wash, and rehang the drapes, section 37(1) of the *Act* confirms a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. Although the Landlord submitted an invoice dated March 5, 2020 in support, there was no photographic evidence referred to that confirmed the drapes were stained. T.E. also denied seeing any stains on the drapes. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$50.00 to remove hooks, fill nail holes, and do touch-up painting in the rental unit, Policy Guideline #1 confirms that a landlord may set rules as to how items may be hung in the rental unit. Such a rule may prohibit the use of adhesive hangers. However, I was referred to no term in the tenancy agreement that prohibited the use of adhesive hangers in the rental unit. In addition, Policy Guideline #1 confirms a tenant is responsible for an excessive number of nail holes, or large nails, or screws or tape have been used and have left wall damage. In this case, the only photograph submitted depicts what appears to be one nail hole and no other damage. Further, I find there is insufficient evidence before me to conclude the mirrors were not present in the rental unit at the beginning of the tenancy. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$240.00 to advertise the rental unit, I find there is insufficient evidence before me to grant the relief sought. Section 45(1) of the *Act* permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy. The notice is effective on the last day of the month following the month in which the notice is received. In this case, I find the letter dated February 10, 2020 was effective to end the tenancy on March 31, 2020. As notice was provided in accordance with the *Act*, I find the Landlord is not entitled to recover advertising costs. This aspect of the Landlord's claim is dismissed.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$455.16, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Unpaid rent (March 1-15, 2020):	\$489.00
Deadbolt lock:	\$55.98
Metal door guard:	\$40.18
Carpet cleaning:	\$105.00
General cleaning:	\$120.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$455.00)
<b>TOTAL:</b>	<b>\$455.16</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$455.16. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 10, 2020

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Residential Tenancy Branch