



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 25, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- 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 attended the hearing and was accompanied by J.H., who provided translation and testimony on behalf of the Landlord. In addition, J.Z., a witness for the Landlord, called into the telephone conference hearing 21 minutes after it began. The Tenant attended the hearing on her own behalf. All in attendance provided a solemn affirmation.

On behalf of the Landlord, J.H. testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. Canada Post delivery information indicates delivery on July 2, 2020. The Tenant acknowledged receipt on or about that date. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

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.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. 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 June 3, 2019. The parties agreed the Tenant vacated the tenancy ended on May 31, 2020. During the tenancy, rent in the amount of \$4,400.00 per month was due on the third day of each month. The Tenant paid a security deposit in the amount of \$2,200.00, which has been applied to unpaid rent by agreement between the parties as described below.

The parties also agreed during the hearing that the Tenant started paying the Landlord \$300.00 per month to rent space in the garage under a separate agreement, starting in February 2020.

The Application discloses a claim for \$11,642.09, which was particularized in the Application. First, the Landlord claimed \$5,000.00 to repair damaged curtains, walls, doors, and windows. J.H. testified the amount claimed was based on an estimate and did not particularize the claim. In support, the Landlord submitted photographs depicting what appear to be damaged blinds, wall damage, a single blue pushpin a wall, and horizontal scratches on a wall.

In reply, the Tenant testified that the damage depicted in the photographs submitted was present at the beginning of the tenancy, and that the curtains were not working at the beginning of the tenancy.

Second, the Landlord claimed \$4,400.00 for unpaid rent that was due on April 3, 2020. With respect to rent that was due on May 3, 2020, J.H. testified that the Tenant paid \$1,957.19 on May 4, 2020, which was supported by a bank statement submitted into evidence. The parties also testified they agreed the Landlord could apply the security deposit to outstanding rent. As a result, J.H. confirmed during the hearing that \$242.81 remains outstanding for the rent due on May 3, 2020.

In reply, the Tenant agreed rent was not paid as alleged but testified that the Landlord told her she did not have to pay rent when due on May 3, 2020 if she moved out of the rental unit on May 31, 2020. The Tenant provided no documentation in support of such an agreement, which was denied by the Landlord.

Third, the Landlord's claim for outstanding gas and electricity bills was articulated during the hearing. J.H. testified that a total of \$1,061.80 (\$308.66 + \$351.76 + \$401.38) is outstanding for the months of April and May 2020. No documentation in support of the amounts claimed was submitted into evidence.

In reply, the Tenant stated during the hearing that she was willing to pay 70% of the bills, which the Landlord accepted, but that she needed to see the bills before paying.

Fourth, the Landlord's claim for the cost to remove furniture from the rental unit was articulated during the hearing. J.H. testified that the Landlord claimed \$1,000.00 and confirmed the amount was an estimate. In support, the Landlord submitted a video depicting various items stored in the garage, including kitchen furniture, blow-up mattresses, mattresses and box springs, a black Saab vehicle, a desk, buckets and Rubbermaid tubs, and various other items.

In reply, the Tenant testified that the Landlord "made up" the amount claimed. She also testified that her few belongings remaining in the rental unit only needed to be moved a few meters into the garage which, as noted above, was rented under a separate agreement. The Tenant suggested that the agreement concerning the garage space continues and that some of the contents belong to others.

Fifth, the Landlord claimed \$1,050.00 for the cost to clean the rental unit. In support, the Landlord submitted four photographs depicting a pile of plastic grocery bags on the kitchen floor and numerous boxes and other items piled on the living room floor. The Landlord also submitted a photograph of an area of stained carpet. In support, the Landlord submitted a quotation dated June 4, 2020 in the amount claimed.

In reply, the Tenant testified she hired two cleaners to clean the rental unit on May 31 and June 1, 2020 and paid them \$900.00 to do so. The Tenant testified that although the Landlord wanted further cleaning to be done, she would not let the Tenant return.

Finally, the Landlord claims \$100.00 in recovery of the filing fee.

### 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 \$5,000.00 to repair damaged curtains, walls, doors, and windows, I find there is insufficient evidence before me to find that the damage depicted in the Landlord's photographs were caused by the Tenant. In the absence of a condition inspection report completed when the tenancy began it is difficult to establish that the damage was caused during the tenancy, which the Tenant denied.

I also find there is insufficient evidence in support of the value of the loss which was based only on the Landlord's estimate. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$4,642.81 for unpaid rent (\$4,400.00 + \$242.81), I find the Landlord has established an entitlement to the relief sought. The Tenant acknowledged rent was not paid as claimed by the Landlord. However, I find the Tenant provided insufficient evidence in support of her claim that the Landlord agreed rent would not be due on May 3, 2020 if she moved out on May 31, 2020. The Landlord is granted a monetary award in the amount of \$4,642.81.

With respect to the Landlord's claim for \$1,061.80 for unpaid gas and electricity bills, I find there is insufficient evidence before me to grant the relief sought. The Landlord's claims were not supported by documentary evidence of the value of the loss. However, the parties agreed during the hearing that the Tenant would pay 70% of the invoices once she receives a copy. The parties are encouraged to continue that conversation following the hearing. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,000.00 to remove furniture from the rental unit, I find there is insufficient evidence before me to grant all of the relief sought. Specifically, the Landlord provided insufficient evidence of the value of the loss, which was again based only on the Landlord's estimate. However, Policy Guideline #16 confirms nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find the Tenant's furniture and belongings remained in the rental unit after the tenancy ended on May 31, 2020 and that this amounted to an infraction of the legal right of the Landlord to receive vacant possession of the rental unit on that date. Accordingly, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$100.00.

With respect to the Landlord's claim for \$1,050.00 for the cost to clean the rental unit, I find there is insufficient evidence before me to grant all of the relief sought. Specifically, the Landlord provided insufficient evidence of the value of the loss, which was again based only on a quote obtained. However, Policy Guideline #16 confirms nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find the photographs submitted by the Landlord confirm the Tenant's furniture and belongings remained in the rental unit after the end of the tenancy on May 31, 2020, and that the rental unit was not left reasonably clean as

required under section 37(2) of the *Act*. Therefore, I find the condition of the rental unit amounted to an infraction of the legal right of the Landlord to receive the rental unit in a reasonably clean condition. Accordingly, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$150.00.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$4,992.81, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Unpaid rent:	\$4,642.81
Remove furniture (nominal):	\$100.00
Cleaning (nominal):	\$150.00
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$4,992.81</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$4,992.81. 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 23, 2020

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Residential Tenancy Branch