



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1163315 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

On June 4, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

H.L. attended the hearing as an agent for the Landlord; however, neither Tenant attended the 40-minute hearing. All in attendance provided a solemn affirmation.

He advised that a Notice of Hearing and evidence package was served to each Tenant by email on June 9, 2020 to the email addresses that they provided on their application to rent. Based on this undisputed testimony, I am satisfied that each Tenant has been served the Notice of Hearing and evidence package. As such, the Landlord’s evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

H.L. advised that the tenancy started on December 1, 2019 as a fixed term tenancy for one year. However, the tenancy ended when the Tenants were physically removed from the rental unit, by way of a bailiff, on February 13, 2020. Rent was established at \$1,900.00 per month and was due on the first day of each month. A security deposit of \$950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that a move-in inspection report was conducted on December 5, 2019 and that a move-out inspection report was not conducted as the Tenants were removed by the bailiff. He advised that the Tenants provided their forwarding address in writing by dropping off a letter to his office on May 27, 2020. Even though the Landlord had the Tenants' forwarding address in writing, the Notice of Hearing packages were served by email pursuant to the state of emergency order. The move-in inspection report was not submitted as documentary evidence.

He advised that the Landlord is seeking compensation in the amount of **\$3,118.87** because the Tenants would not move out after being served an Order of Possession on January 24, 2020. The amount that the Landlord is seeking is the cost of the bailiff service. A copy of the bailiff invoice was submitted as documentary evidence.

He also advised that the Landlord is seeking compensation in the amount of **\$1,700.00** for the cost of garbage disposal and cleaning because the Tenants did not leave the rental unit in a re-rentable state at the end of the tenancy. He stated that the Tenants left a considerable amount of garbage and debris behind that the bailiff would not take. He submitted a copy of an invoice which indicated that three truck loads of garbage were taken on February 16 and 18, 2020 to be disposed of. He stated that he spent four hours of his own time loading this garbage into the trucks. While he advised that he had pictures of the amount of garbage left behind, he did not submit this as documentary evidence as it was his belief that the invoice would be sufficient.

He advised that as part of this claim, the Landlord was charged \$188.00 by this same company to clean the rental unit. He stated that the inside of the house was a mess and by his estimation, it took approximately five to six hours to clean. He stated that he

“decided not to take pictures” of the condition of the rental unit as there was no move-out inspection report. However, after asking him to explain this rationale, it still did not make sense.

Finally, he advised that the Landlord is seeking compensation in the amount of **\$3,800.00** for rent owing for February and March 2020. He stated that the Tenants did not pay February 2020 rent and left the rental unit in need of many repairs. He submitted that the Tenants stole the dryer, left many holes in a fence, and broke a door. This was the reason that he did not start advertising the rental unit until March 6, 2020. He stated that he eventually found new tenants to rent the place for April 1, 2020 but the rent was lowered to \$1,500.00 per month because the Landlord did not want to pay for some repairs.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants’ forwarding address in writing on May 27, 2020. As the tenancy ended on February 13, 2020, I find that May 27, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on June 4, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming

compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

With respect to the Landlord’s claim of \$3,118.87 for the cost of the bailiff fees, as the hiring of the bailiff was undisputed and necessary, I grant the Landlord a monetary award in the amount of **\$3,118.87** to satisfy this claim.

Regarding the Landlord’s claim of \$1,700.00 for the cost of garbage disposal and cleaning, given how the Tenants were forcibly removed from the rental unit by a bailiff, I find it reasonable to infer that the Tenants more likely than not left garbage, debris, or unwanted property behind, and did not clean the rental unit either. However, I find it important to note that apart from the invoice submitted, there was no other evidence provided to substantiate this claim. It is not clear to me why the Landlord did not submit any additional evidence to support the amount of garbage, debris, or unwanted property that was left behind.

Given that I am satisfied that the Tenants likely left some of this for the Landlord to deal with, but given that the Landlord has provided insufficient evidence to support his entire claim, I grant the Landlord a monetary award in the amount of \$800.00 for disposal of garbage and debris. In addition, as I find it reasonable to conclude that the Tenants did not clean the rental unit, I am also satisfied that the Landlord’s claim of \$188.00 for approximately five to six hours of cleaning is realistic. As such, I grant the Landlord a total monetary award in the amount of **\$988.00** to satisfy this claim.

With respect to the Landlord’s claim for \$3,800.00 for lost rent, Policy Guideline # 5 outlines a Landlord’s duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on December 1, 2019, yet the tenancy effectively ended when Tenants were forcibly removed from the rental unit on February 13, 2020. Sections 44 and 45 of the *Act* set out how tenancies end.

Given that the Tenants were removed from the rental unit, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss.

When reviewing the totality of the evidence before me, I am satisfied from the undisputed evidence that the Tenants did not pay February 2020 rent. As such, I grant the Landlord a monetary award in the amount of **\$1,900.00** for February 2020 rent.

Furthermore, the undisputed evidence is that the Landlord made sufficient attempts to re-rent the unit as quickly as possible after assessing the damage to the rental unit and making some repairs. As the Landlord re-rented the rental unit on April 1, 2020, I am satisfied that the Tenants are responsible for the rental loss that the Landlord suffered until they were able to secure a new tenant. As such, I grant the Landlord a monetary award in the amount of **\$1,900.00** for March 2020 rent.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

Bailiff fees	\$3,118.87
Garbage disposal and cleaning	\$988.00
February 2020 rental loss	\$1,900.00
March 2020 rental loss	\$1,900.00
Recovery of filing fee	\$100.00
Security deposit	-\$950.00
<b>TOTAL MONETARY AWARD</b>	<b>\$7,056.87</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$7,056.87** in the above terms, and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 6, 2020

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Residential Tenancy Branch