



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing was reconvened after the issuance of a July 27, 2020 interim decision. At the previous hearing, I granted the tenant's application for an adjournment due to his medical problems and his inability to speak or comprehend. No specific date for the reconvened hearing was noted on the interim decision; the decision stated the hearing would be reconvened on the date identified in the Notice of Hearing documents included with the decision.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The landlords attended the hearing and were represented by their counsel, JL. The tenant did not attend the hearing, although I left the teleconference connection open throughout the hearing which lasted approximately one hour, from 11:00 a.m. to 11:55 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that the landlords, their counsel and I were the only ones who had called into this teleconference.

45 minutes after the hearing began, a person called into the hearing identifying herself as a witness for the tenant at 11:45 a.m. I asked this person if she was acting as agent for the tenant and this person clearly identified she was not acting in that

capacity; the tenant was representing himself. This person stated she had called into a *different hearing* at 11:00 a.m. using a different access code and was waiting on hold since that time. She indicated she did not have the access code for this hearing and used the access code from the previous hearing instead. This person advised me that she and the tenant were not sent a Notice of Hearing document from the Residential Tenancy Branch. I inquired how this person knew the hearing was scheduled for today's date without being sent a Notice of Hearing which provides the access codes to access the hearing. This person stated the tenant was "notified" it would be adjourned to this date without further elaboration on this point.

The landlord's counsel objected to this person participating in this hearing as she was not authorized by the tenant to act as agent and the landlord's counsel was not provided with any notice from the tenant regarding any agency arrangement.

I determined the person who called in did not proof of authority to act on behalf of the tenant as required by Rule 6.8 of the Residential Tenancy Branch Rules of Procedure. I determined this person was a witness for the tenant. As the tenant did not attend the hearing to call this witness to give evidence in accordance with rule 7.4, this person was excused. No testimony was taken from this person, the tenant's uncalled witness.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

#### Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a luxury oceanfront single family house located in an upscale neighbourhood. The fixed 2-year tenancy began on May 1, 2018, set to end on April 30, 2020. A copy of the tenancy agreement was submitted as evidence by the landlord. Rent was set at \$4,500.00 per month payable on the first day of each month. A security deposit of \$2,250.00 was collected by the landlord which he continues to hold. No condition inspection report was done at the commencement of the tenancy although the landlord submits a 'walk through' was done with the landlord's rental agent and the tenant.

On February 21, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. A copy of the Notice was provided as evidence. The notice, dated February 21<sup>st</sup>, states the tenant failed to pay the \$4,500.00 rent for the month of January that was due on January 1, 2020. A copy of the cheque returned from the landlord's bank marked "payment

stopped” for the January rent was provided as evidence. The landlord testified rent for the month of February 2020 had already been paid.

The effective date on the Notice was March 2, 2020 however the tenant did not vacate the rental unit until March 5<sup>th</sup>. The landlord seeks to recover rent for the entire month of March because the house was not rentable due to repairs that needed to be done to the property.

On March 5<sup>th</sup>, the tenant met with the landlord’s contractor and rental agent and did another ‘walk-through’. No written record was made at this time. When the tenancy ended, the landlord came to believe the tenant was using the property as his own private vacation getaway. He did not use it as a residence and did not care for it as a resident would.

The landlord made the following claims for damage which were not disputed by the tenant. Each claim is supported by photographs depicting the damage and an invoice or estimate from the landlord’s contractor. The landlord testified that he did not call other contractors to submit estimates for the work since he has used this contractor in the past, is familiar with the quality of his work and believes the contractor provides reasonable work for the fees charged. Also, the landlord was unable to find contractors willing to take on the small jobs required on this worksite, especially during the Covid-19 pandemic.

When the tenancy ended, the garage remote control did not work. The landlord paid \$107.96 to have it repaired.

The garage door had superficial damage done to it from what the landlord surmises to be a hockey puck being shot against it. The landlord originally claimed in excess of \$800.00 for the replacement of the door, however he got it repaired instead for a fee of \$70.88.

A door deadbolt was broken during the tenancy and the landlord paid \$212.12 to have it repaired, although original quote for the work was \$182.00. The repair was done after the adjourned hearing and no further evidence was allowed to be uploaded, so the invoice for the repair was not submitted.

The tenant purposefully damaged the deck so he could complain to the city that the house was unsafe. He created a hole in the deck for this purpose and the contractor estimated it would cost \$565.95 to fix it.

There are 2 ponds in the back yard and one in the front yard. The condition of the ponds at the beginning of the tenancy was good, fully functional, all in working condition. At the end of the tenancy, the ponds were dirty and required maintenance.

The tenant did not take care of the landscaping during the tenancy and many plants died. They were dried up and withered. The landlord's contractor provided an estimate of \$3,864.00 to remove the dead plants and replace the affected plants.

The landlord's contractor, called as a witness testified that the landlord's property is very large with lots of dead plants. For the labour, equipment, tool usage, and hiring of bins to haul away the debris it costs a lot of money. He had to or was going to replace one maple, 3 cedars, 3 rhododendrons, and various other shrubs. He estimates each of the mature rhododendrons would cost \$300 to \$500.00 apiece.

### Analysis

Section 7 of the Act states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Claim for unpaid rent

Based on the undisputed testimony of the landlord, and the evidence of the cancelled rent cheque, I am satisfied the tenant was required to pay rent in the amount of \$4,500.00 for the month of January, 2020 and failed to do so. This is contrary to

section 26 of the Act and I find the landlord is entitled to recover that amount from the tenant. The landlord is awarded \$4,500.00 pursuant to section 67 of the Act.

Although the tenancy ended on March 5, 2020 in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord seeks to recover rent for the remainder March because the residential property was un-rentable due to the neglect and damage done by the tenant and because a tenant could not be found for the incomplete month of March. Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states:

*Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.*

I have reviewed the landlord's photographs and I am satisfied that the rental property required the rest of the month to bring back to rentable condition and I find it reasonable that the landlord was unable to find a tenant willing to commence a tenancy right after the time the tenant vacated it. The landlord is awarded rent for the month of March 2020 in the amount of \$4,500.00.

- Garage Remote repair

The landlord provided uncontroverted evidence that the garage remote didn't work at the end of the tenancy. I am satisfied it cost \$107.96 to fix it and I award the landlord this amount pursuant to section 67.

- Garage door damage repair

The photographs provided by the landlord to prove his claim for a damaged garage door do not appear to depict extensive damage as claimed by the landlord. I could not detect any visible damage, other than normal wear and tear to a wooden painted door that is exposed to the elements. I find the landlord has provided insufficient evidence for this portion of his claim to succeed and I dismiss it.

- Door deadbolt and rekey

Section 25 of the Act requires a landlord to change or rekey locks at the start of each new tenancy and pay all the costs associated with the changes. I find that this is an expense that the landlord was eventually required to pay and that the tenant should not be required to do so at the end of his tenancy. This portion of the landlord's claim is dismissed.

- Decks, Ponds and Plants

Section 21 of the Regulations state 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.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the existence of the damages allegedly caused by the tenant when the tenancy ended. Though his testimony and photos taken at the end of the tenancy bear some weight, he has not met the burden of proof to show me the difference in condition between move-in and move-out.

Although the tenant did not attend the hearing to contradict any of the landlord's testimony or evidence, I find that the lack of a condition inspection report done at the commencement of the tenancy precludes me from determining whether the deck had any pre-existing damage, whether the ponds were in good condition or whether the landscaping was properly maintained. Photographs taken of the house and property at the commencement of the tenancy would have also been useful to provide a baseline for me to compare the condition of the property at the end of the tenancy. None were provided. I find the landlord has provided insufficient evidence to award any of the damages sought for the deck, pond or plants. In terms of the 4-point test, the landlord has failed to prove the existence of the damage or loss (point 1) and I dismiss this portion of the landlord's claim.

- Prejudgement Interest

The landlord seeks interest on the unpaid rent at the registrar's interest rate as set by the courts of BC. The landlord's counsel did not advise me what that rate of interest is or provide any calculation on what she submits the award should be. This portion of the landlord's claim fails on point 3 of the 4-point test, as the landlord did not supply sufficient evidence as to the value of this portion of the claim. Likewise, landlord's counsel was unable to provide me with any authority under the Residential Tenancy Act that allows me to award prejudgement interest on rent money and for these reasons I dismiss this portion of the landlord's claim.

- Filing fee

As the landlord's application was mostly successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

- Security deposit

The landlord continues to hold the tenant's security deposit in the amount of \$2,250.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

<u>Item</u>	<u>amount</u>
January rent	\$4,500.00
March rent	\$4,500.00
Garage remote control repair	\$107.96
Filing fee	\$100.00
Less security deposit	(\$2,250.00)
<b>Total</b>	<b>\$6,957.96</b>

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$6,957.96**. The tenant 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 31, 2020

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Residential Tenancy Branch