



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant were provided.

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The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by email sent on May 6, 2020. The landlord submitted a screenshot of the email. The landlord testified the parties routinely communicated by email at the address to which the materials were sent.

Pursuant to sections 89 and 90 and the Director's Order for service during the State of Emergency, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution as required by the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following?

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

Background and Evidence

This month-to-month tenancy began on February 1, 2019. Monthly rent was set at \$1,000.00, payable on the 1st day of each month. The agreement was verbal, and no written tenancy agreement was submitted. The tenant provided a security deposit of \$500.00 which is held by the landlord without the authorization of the tenant.

The landlord testified that the tenant vacated on May 1, 2020 without notice. The landlord discovered that the unit was extensively damaged by cat urine and was not habitable when she vacated; the unit is currently undergoing extensive repairs.

The landlord stated that no condition inspection report was conducted on moving in or moving out as the tenant vacated suddenly and without notice. The landlord brought an application on May 5, 2020. The landlord did not receive a forwarding address although he communicated regularly with the tenant by email.

The landlord claimed only a monetary award of \$500.00 in the amount of the security deposit for outstanding rent. He explained that he did not want to be “too hard” on the tenant during the pandemic. The landlord did not include a claim for reimbursement for expenses associated with the “tearing apart” and “rebuilding” the unit due to the damage caused by urine.

The landlord stated he was not familiar with the provisions of the *Act* calling for the doubling of the security deposit.

Analysis

The landlord’s testimony and evidence were uncontradicted by the tenant who did not attend the hearing. I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

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

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In this case, the onus is on the landlords to prove the landlord is entitled a claim for a monetary award.

I accept the landlord's evidence and find that the landlord incurred a loss in rental income for the month of May 2020 because of a direct violation by the tenant of their obligations to provide notice of an intention to vacate and to pay rent under the *Act* and the tenancy agreement.

In considering the issue of mitigation, that is, the landlord's efforts to reduce the landlord's losses, I have considered *Policy Guideline # 3 – Claims for Rent and Damages for Loss of Rent* which provides guidance on the landlord's obligations to take reasonable steps to reduce losses. The Guideline states in part as follows:

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

I accept the landlord's testimony as uncontradicted and credible that the unit was damaged, could not be re-rented and is currently being "gutted".

In conclusion, I find that the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the above tests and that the landlord is entitled to a monetary award for compensation for loss of rent for May 2020 in the

amount of \$500.00 as claimed.

### *Security Deposit*

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

As testified by the landlord, I find there was no condition inspection on moving in and out; no report was submitted as evidence.

I find that the landlord extinguished their right to claim against the tenant's security deposit for damages, as per sections 24 and 36 of the Act, for failure to complete move-in and move-out condition inspection reports for this tenancy.

Section 19 of the *Residential Tenancy Regulation* ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the *Regulation* requires detailed, specific information to be included in the condition inspection reports.

Residential Tenancy Policy Guideline 17 states the following, in part:

1. *Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*
  - *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

As the landlord's claim to the security deposit has been extinguished and as the landlord failed to return the security deposit, the security deposit is doubled. In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of their security deposit of \$500.00 totalling \$1,000.00.

Pursuant to section 72, the award to the landlord is offset by the award to the tenant. The tenant is granted a monetary award in the amount of \$500.00.

A summary of the calculation of the award follows:

<b>ITEM</b>	<b>AMOUNT</b>
Award for outstanding rent	\$500.00
(Less doubling of security deposit - section 38(6))	(\$1,000.00)
<b>Monetary Award Tenant</b>	<b>(\$500.00)</b>

### Conclusion

The tenant is entitled to a monetary award of \$500.00. This award must be served on the landlord. The Order may be filed in and enforced by the Court of the Province of British Columbia.

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: September 03, 2020

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Residential Tenancy Branch