



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via email. Both parties confirmed the tenant served the landlord with the submitted documentary in response via Canada Post Registered Mail on September 1, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

During the hearing the landlord stated that a revised monetary claim for \$6,711.00 was made. However, after review of the filed application it appears that the landlord failed to file an amendment to the application for dispute increasing the monetary claim from \$4,973.65 and had instead submitted a revised monetary worksheet as part of her evidence submission. Residential Tenancy Branch, Rules of Procedure, Rule 4 states in part that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed amendment to an

Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office. In this case, I find that the landlord failed to make and file an amendment to the application for dispute and the tenant has not been provided an opportunity to properly respond. In the interest of the principles of natural justice, I find that it is prejudicial to the tenant to allow an amendment at this time. The landlord's request to add an amendment increasing the monetary claimed is denied. The landlord has stated that she wished to proceed with the original claim as filed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on June 12, 2019 and ended on April 2, 2020. The monthly rent was \$1,750.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,000.00 was paid.

The landlord seeks a monetary claim of \$4,973.65 which consists of:

\$121.85	Outstanding Hydro bill, March 2020
\$60.56	Outstanding Hydro bill, May 2020
\$145.95	Washer Repair
\$236.25	Cleaning
\$3,688.37	Floor Replacement cost
\$341.25	Wall Damage repair cost
\$162.75	Lock Replacement
\$116.67	Unpaid Rent

The landlord claims that the tenant failed to pay outstanding utility costs for hydro for March and May of 2020 for \$121.85 and \$60.56. The tenant did not dispute this claim stating that he accepts that these costs are owed to the landlord.

The landlord seeks recovery of washer repair cost of \$145.95 which the landlord had paid to the tenant to reimburse him for the washer repair. The tenant disputes this claim arguing that the washer overflowed in September of 2019. The tenant stated that the repair technician found a "handkerchief" stuck in the water pump" and as a result the washer malfunctioned. The landlord argued that a foreign object, the "handkerchief" was found which caused the overflow to occur. The landlord stated that the washer has never malfunctioned previously and that the cause of the overflow was due to the tenant overloading the washer.

The landlord also stated that as a result of the water overflow from the washer, the landlord claims that the hardwood floor was damaged due to water leaking into the flooring. The landlord claims that there is mold under the hardwood due to the flooding caused by the tenant's negligence in overloading the washer. The landlord stated that the rental smells of mold and the trim and baseboards are rotting and there are several loose hardwood panels. The landlord has submitted a copy of an estimate to replace the hardwood with a cheaper laminate flooring for \$3,688.37. The landlord submitted in support of this claim pictures of the hardwood floor which shows gaps between the wood panels.

The landlord seeks \$236.25 for cleaning costs. The landlord claims that the tenant vacated the rental unit leaving it dirty with grease and grime. The landlord incurred a cost by hiring a cleaning service. The tenant disputes this claim arguing that the tenant cleaned the unit for 8 hours prior to the end of tenancy. The landlord has submitted in support of this claim 19 photographs of the rental unit showing the microwave, refrigerator, backsplash, undersink cabinet, door and wall, flooring dirty requiring cleaning. The tenant has argued that he has submitted 13 of his own photographs showing the rental unit at the end of tenancy.

The landlord also seeks recovery of \$341.25 for the cost of repairing the walls which have an excessive amount of screw holes. The tenant disputes this claim arguing that each picture hook that was used uses 3 nails and that the landlord had approved the use of this hardware for installing his pictures. The landlord claims that there are over 49 different screw holes of varying size and glued Velcro to the walls. The landlord has submitted an estimate from a contractor dated May 12, 2020 for \$341.25 which details the work for: Interior painting, repair walls; small holes, repair damage to front door and upper cabinet, repair bedroom door. The landlord has submitted 26 photographs showing the numerous holes in the walls, wall scrapes, door damage and glued Velcro in the rental unit. The tenant has also argued that he had obtained an estimate on the landlord's photographs from the same contractor dated August 28, 2020 for \$118.13 for

the cost of drywall repairs. The landlord argued that the numerous screw holes in some walls require that the entire wall be re-painted to avoid a color mismatch. The landlord stated that this was included in her estimate. The tenant has also argued that the door damage was not caused by the tenant and has referenced a photograph submitted by the tenant of the hallway which shows the interior of the entry door which the tenant claims shows no damage. The landlord also claims that the kitchen bar cabinet was damaged with a "chip in the wood". The landlord's witness stated that he was present during the move-out and that the tenant caused the damage during the move of a closet. The tenant did not dispute this claim.

The landlord seeks \$162.75 for the cost of replacing the front door lock and the mailbox lock based upon verbal estimate by a locksmith. The tenant disputes this claim arguing that all keys were returned to the landlord and he no longer has access to the rental. The landlord confirmed that all keys were returned but argued that the tenant had gained access to the rental unit on April 28, 2020 after the end of tenancy on April 2, 2020. The landlord confirmed that the tenant had gained entry by having the building manager give him access to remove some furniture that was left. The landlord feels that the rental unit is unsafe due to the tenant being able to gain access.

The landlord seeks \$116.67 for unpaid rent for the 2 days that the tenant overheld the rental unit. The landlord stated that this is a pro-rated amount for the two days of overholding based upon the monthly rent of \$1,750.00. Both parties confirmed that the tenant was to vacate the rental unit at the end of April 2020 in compliance with a 2 month notice to end tenancy, but the tenant chosen to vacate sooner on April 2, 2020 without notice.

### Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case the tenant has accepted responsibility for the cost of outstanding utility arrears of \$121.85 and \$60.56 for hydro costs.

On the landlord's claim for \$145.95 for washer repair costs and hardwood floor replacement of \$3,688.37, I find on a balance of probabilities that the landlord has established a claim. Although the tenant has argued that the washer overflow was caused by a washer malfunction, the landlord has provided sufficient evidence to satisfy me that the washer overflow was caused by a "foreign object" the "handkerchief" as confirmed by the tenant. This is further confirmed by the invoice dated September 7, 2019 which states in part, "Removing foreign objects from Impeller housing area that caused functioning issue and water leaking and overflowing." I also find on a balance of probabilities that the landlord has established a claim for the replacement costs for the flooring. Although the tenant has argued that the landlord was negligent as the landlord was notified at the time, but did not act to inspect and address the issue at that time. The landlord argued that the tenant had notified them that there was only a little water overflowing which the tenant cleaned up with a towel. The landlord stated that the tenant minimized the extent of the overflow incident. I also refer to the estimate dated May 8, 2020 which states in part of the notes, "...Customer is responsible to remove moisture or mold from subfloor prior to install." It also states that at the time of measurement for the estimate the "humidity at the time of measure was 34%."

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant for the cleaning claim of \$236.25. Although the tenant has argued and provided photographs of the rental unit in dispute of this claim, I find that the tenant's photographs fail to provide me with any contrasting view of the landlord's claim that the rental unit was vacated leaving it dirty. The tenant's photographs depict primarily the countertops, the bedroom furniture, the living room furniture, exterior view of the kitchen appliances, wardrobe, bathroom, desk and hallway. Whereas the landlord's photographs show in greater detail the interior of the refrigerator, microwave, close ups of the wall, closet door and flooring. These essentially unchallenged photographs show a rental requiring cleaning. The landlord has been successful in this part of their claim.

On the landlord's claim for \$341.25, I find on a balance of probabilities that the landlord has been successful for this claim. Although the tenant did not dispute that the screw holes and Velcro tape were made by the tenant, the tenant argues that the landlord was aware and consented to their use on the walls. The tenant has also argued against the estimate provided by the landlord as he had obtained an estimate for the drywall repair from the same contractor for a lower amount. I find that the difference in the two estimates are that the landlord had the contractor attend the unit to provide a detailed

estimate whereas the tenant relied upon the submitted photographs of the landlord. I also find that the landlord's estimate includes door repairs and a upper cabinet as shown the landlord's photographs. The tenant did not dispute the landlord's claim regarding the kitchen bar cabinet. I also note the photograph referenced by the tenant of the hallway showing the front door fails to provide sufficient detail for comparison with the landlord's photograph. Even at maximum magnification of the door, I cannot make a comparable review and find that this photograph is insufficient to show that there is no damage. On this basis, I find that the landlord has been successful.

I find that the landlord's claim for \$162.75 has failed. Both parties confirmed that the tenant returned all key and entry access to the landlord. Despite the landlord's claims that the tenant had gained illegal access to the rental unit, the landlord confirmed in her own direct testimony that the building manager was the one who gave access to the tenant to remove some furniture after the end of tenancy. I find that the landlord's "feeling" that the rental unit is unsafe is without merit. This portion of the landlord's claim is dismissed.

I find based upon the undisputed evidence of both parties that the landlord has established a claim for unpaid rent of \$116.67 for pro-rated amount for the 2 days that the tenant overheld the rental. The tenant confirmed that he overheld the rental and vacated the unit on April 2, 2020.

The landlord has established a total monetary claim of \$4,710.90 for:

\$121.85	Outstanding Hydro bill, March 2020
\$60.56	Outstanding Hydro bill, May 2020
\$145.95	Washer Repair
\$236.25	Cleaning
\$3,688.37	Floor Replacement cost
\$341.25	Wall Damage repair cost
\$116.67	Unpaid Rent

The landlord having been primarily successful in her application for dispute is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,000.00 security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted a monetary order for \$3,810.90.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: September 28, 2020

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Residential Tenancy Branch