



# 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

On April 5, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages and compensation for loss of rent and utilities, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and the Tenant attended the original hearing on August 11, 2020 which was subsequently adjourned. The hearing was reconvened on this date.

The Landlord attended the reconvened conference call hearing; however, the Tenant did not attend at any time during the 55-minute hearing. According to Residential Tenancy Branch records, both the Landlord and the Tenant were emailed the Notice of Dispute Resolution Proceeding-Reconvened Hearing packages on August 13, 2020. I noted that the email the Residential Tenancy Branch used for the Tenant was confirmed by the original arbitrator and was the same email that the Landlord had communicated with the Tenant about tenancy issues in 2020. Accordingly, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 71(2)(c) of the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent/utilities, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord provided the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 24, 2019. The rent was \$1,675.00 and due on the 24<sup>th</sup> of each month. The Landlord collected and still holds a security deposit in the amount of \$837.50. The Tenant moved out of the rental unit on March 23, 2020.

The Landlord provided the following undisputed testimony:

The Tenant paid rent for March 2020 (period of February 24-March 23, 2020). On March 9<sup>th</sup>, 2020, the Tenant emailed the Landlord about terminating the tenancy early. On March 12, 2020, the Tenant provided the Landlord written notice that the Tenant would vacate the rental unit by March 23, 2020.

The Landlord attempted to find new tenants immediately and advertised, showed and interviewed prospective new tenants; eventually establishing a new tenancy for May 1, 2020.

The Landlord is claiming a loss of rent between March 24, 2020 and April 30, 2020 in the amount of \$2,053.22.

The Landlord stated that the Tenant was responsible for paying the municipal utilities bill during their tenancy. The Landlord submitted an outstanding bill from the municipality and stated that she confirmed with the municipality that if the bill wasn't paid by the end of 2020, the outstanding sum would be added to her property taxes.

The Landlord is claiming a loss of \$351.62 for the outstanding utility bill related to the period when the Tenant was living in the rental unit.

The Landlord submitted photos, invoices, estimates and provided testimony about damage to the unit. She reviewed damage to a countertop, chips in the laminate hardwood flooring, a badly scratched pane of glass, a damaged windowsill and some cleaning that was required. The Landlord referred to the condition inspection reports and noted that the rental unit was new when the Tenant moved in and that the damage occurred during the Tenant's tenancy. The Landlord estimated that the damages added up to over \$2,000.00.

Although the Landlord's total monetary claim is over \$4,300.00, the Landlord is only asking to apply the security deposit to her claim and to be compensated for the outstanding utility bill in the amount of \$351.62.

### Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45(2) of the Act states that a Tenant may end a fixed term tenancy by giving the Landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement.

I accept the Landlord's undisputed testimony that there was a fixed-term tenancy and I find that the Tenant terminated the tenancy early, in violation of the Tenancy Agreement, by moving out of the rental unit on March 23, 2020.

Based on the testimony and evidence submitted, I find that the Landlord attempted to mitigate her losses by advertising the rental unit in a timely manner, taking the time to show the rental unit to prospective tenants and ultimately establishing a new tenancy for May 1, 2020.

Based on the above, I find the Landlord has established a monetary claim for the loss of rent between March 24, 2020 and April 30, 2020, in the amount of \$2,053.22.

Based on the testimony and evidence submitted by the Landlord regarding the outstanding utility bill, I find that the Tenant is responsible to pay for those utilities and has not. I find that the Landlord has established a monetary claim in the amount of the outstanding utilities, in the amount of \$351.62.

I accept the Landlord's testimony that she has incurred costs for some of the repairs and cleaning of the rental unit; however, I will not analyze this part of the Landlord's claim as she has chosen not to pursue compensation from the Tenant in this regard.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee, in the amount of \$100.00, for this Application for Dispute Resolution.

The Landlord has established a monetary claim, in the amount of \$2,504.84, which includes \$2,053.22 in unpaid rent, \$351.62 in unpaid utilities, and \$100.00 in compensation for the filing fee. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$837.50.00, in partial satisfaction of the monetary claim.

Based on these determinations and the Landlord's request to limit her compensation to the security deposit and the amount of the unpaid utility bill, I grant the Landlord a Monetary Order for the balance of \$351.62, plus the \$100.00 for the filling fee, in accordance with Section 67 of the Act.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$451.62. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 15, 2020

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Residential Tenancy Branch