



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of all or part of the security deposit, and to recover the filing fee.

The landlord and tenant SV (tenant), who indicated they were appearing on behalf of the respondents appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed receiving the evidence from the landlord and that they had the opportunity to review that evidence prior to the hearing. The landlord stated that they were not served with the tenants' documentary evidence and the tenant testified that it was sent via text, which is not an approved method of service. As a result, the tenants' documentary evidence was excluded in full as it was not served in an approved method. The tenant was advised that I could consider their testimony during the hearing and they could respond to the documentary evidence of the landlord.

### Preliminary and Procedural Matters

During the hearing, the landlord claimed to have amended their monetary claim, however, the monetary claim was not amended in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). As a result, the landlord was advised that it would be prejudicial to the tenants to increase the original monetary claim

during the hearing, when the Monetary Order Worksheet (MOW) first submitted with the application totals \$1,937.1X (the "X" digit is missing from the MOW). Therefore, the landlord was advised that the hearing would proceed with the MOW as served on the RTB and the tenant, and not the higher amount of \$2,139.33 as the higher amount did not include sufficient particulars.

The parties confirmed their email addresses at the outset of the hearing. The decision will be emailed to the parties as a result.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to recover the cost of the filing fee under the Act?

### Background and Evidence

A fixed term tenancy began on September 1, 2019 and was scheduled to revert to a month to month tenancy after August 31, 2020. Monthly rent in the amount of \$1,795.00 was due on the first day of each month. The tenants paid a security deposit of \$897.50 and a pet damage deposit of \$897.50 at the start of the tenancy which the landlord continues to hold. The parties agreed that the tenant vacated the rental unit on May 9, 2020.

The landlord has applied for a monetary order in the amount of \$1,937.16, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. TV wall mounts	\$268.78
2. Lock and outlet covers	\$47.30
3. Cleaning	\$294.00
4. 60% of Hydro	\$429.58
5. Loss of rent	\$897.50
<b>TOTAL</b>	<b>\$1,937.16</b>

Regarding item 1, the landlord has claimed \$268.78 for two missing TV wall mounts (wall mounts) that the landlord testified were on the walls at the start of the tenancy and were missing at the end of the tenancy. The tenant stated that the wall mounts were taken at first but returned them. The landlord denied that the tenants ever returned either of the wall mounts and submitted in evidence a receipt supporting that the amount of \$268.78 was paid to replace the two wall mounts. The landlord also presented before and after photos showing the wall mounts at the start of the tenancy and the areas of the walls that show the wall mounts were missing at the end of the tenancy.

Regarding item 2, the landlord has claimed \$47.30 for the cost to replace the front lock to the rental unit and the damaged outlet covers. The parties agreed that the tenants gave their written notice dated April 3, 2020, to end the tenancy by the end of April 2020. The tenants failed to move out by the end of April 2020. The landlord testified that the tenants were given several opportunities to return the keys and the tenants kept asking for an extension for cleaning and eventually by May 9, 2020, the landlord changed the locks as new tenants were scheduled to move into the unit on May 15, 2020. Even though the keys were eventually returned later on May 9, 2020, the landlord stated the locks had already been changed by that time and is seeking reimbursement of the cost as a result due to the tenants failing to return the rental unit keys earlier. The landlord submitted a receipt in the amount claimed for the lock and outlet covers.

Regarding the outlet covers, the landlord referred to the incoming and outgoing Condition Inspection Report (CIR), which supports that the outlet covers were damaged by the end of the tenancy and were in good condition at the start of the tenancy. The tenant responded to item 2 by stating that they did not recall the outlet covers being damaged and made no reference to the lock.

Regarding item 3, the landlord has claimed \$294.00 for the cost to have the rental unit cleaned as the landlord testified that the tenants failed to leave the rental unit in a reasonably clean condition at the end of the tenancy. The landlord presented photos of what the landlord described was a dirty rental unit. The landlord also stated that the tenants were provided three opportunities to properly clean the rental unit and failed to do so. In addition, the landlord testified that the carpets were very smelling from the tenants' dog and that steam-cleaning of the carpets was required. The landlord presented an invoice for the amount of \$294.00, which states that that \$250.00 was charged before tax for cleaning and \$30.00 for steam cleaning of one bedroom, plus taxes for the total amount of \$294.00. The invoice indicates that payment was received May 28, 2020.

The landlord referred to a cleaning document, which included many colour photos. The landlord presented photos which showed a greasy hood fan, dirty areas inside a fridge, a stove with dirty oven racks, dust and debris behind the appliances in the kitchen, dirty blinds, dirty window tracks, dirty interior windows, dust and debris under baseboard heaters, a dirty sink, a dirty sink faucet and surrounding area, dirty light switches and covers, and dirty flooring in several areas.

The tenant's response to item 3 was that they believed the pet damage deposit would cover the cleaning and then later added that they believed the rental unit was reasonably clean.

Item 4 was resolved by way of a mutually settled agreement, which will be discussed later in this decision in the amount of \$429.58, which is 60% of the unpaid hydro utilities.

Regarding item 5, the landlord has claimed \$897.50 for loss of May 1-14, 2020 as the rental unit was not re-rented until May 15, 2020. The landlord submitted a copy of the new tenancy agreement, which supports that new tenants paid \$897.50 from May 15, 2020 to the end of May 2020, and that monthly rent after that was \$1,795.00 per month for the new tenants. The landlord reminded the tenant that they did not return the rental unit keys until May 9, 2020, even though their written notice said they would be vacating at the end of April 2020 and the fixed-term tenancy was not scheduled to revert to a month to month tenancy until August 31, 2020. The landlord denied giving the tenants permission to end the fixed term early without penalty.

The tenant's response to this portion of the landlord's claim was that they had to move as a murderer was living there, which the tenant provided no documentary evidence or witness testimony to support in any way.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Item 1** - The landlord has claimed \$268.78 for two missing TV wall mounts (wall mounts) that the landlord testified were on the walls at the start of the tenancy and were missing at the end of the tenancy. I find the tenants failed to provide any supporting documentary evidence to support that the wall mounts were returned, and I find the tenant's testimony was vague as the tenant failed to indicate when the wall mounts were returned. In addition, I afford the landlord's photo evidence significant weight as I find that removing a fixed item such as wall mounts from a wall to be unreasonable and

would not be done by mistake on the balance of probabilities. As a result, I find it more likely than not that the tenants removed the wall mounts and kept them and owe the landlord as a result. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$268.78** as claimed for this portion of their claim.

**Item 2** - The landlord has claimed \$47.30 for the cost to replace the front lock to the rental unit and the damaged outlet covers. The parties agreed that the tenants gave their written notice dated April 3, 2020, to end the tenancy by the end of April 2020. Even though the tenants ended the tenancy contrary to the Act, which I will deal with in item 5 below, I find the landlord had the right to expect the tenants to vacate by the end of April 2020, as they indicated, and the tenants failed to do so. Section 37(2)(b) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2) When a tenant vacates a rental unit, the tenant must**

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[Emphasis added]

Based on the above, I find the tenants failed to vacate the rental unit by the end of April 2020 and by waiting until later on May 9, 2020, and due to the breach of section 37(2)(b) of the Act the tenants are liable for the cost of rekeying the rental unit. I also find the CIR supports that the outlet covers were in good condition at the start of the tenancy and were damaged at the end of the tenancy. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$47.30** as claimed for this portion of their claim.

**Item 3** - The landlord has claimed \$294.00 for the cost to have the rental unit cleaned as the landlord testified that the tenants failed to leave the rental unit in a reasonably clean condition at the end of the tenancy. After reviewing the CIR and the photos submitted in evidence by the landlord, I disagree with the tenant that the rental unit was left in a reasonably clean condition. I have also considered that the tenants failed to submit in evidence a carpet cleaning receipt to support that they cleaned the carpets after having a dog in the rental unit. Therefore, I find it more likely than not that the

rental unit carpet required steam cleaning due to the dog inside the rental unit as described by the landlord. Section 37(2)(a) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2) When a tenant vacates a rental unit, the tenant must**

- (a) **leave the rental unit reasonably clean**, and undamaged  
except for reasonable wear and tear, ...  
[Emphasis added]

Given the above, I find the tenants breached section 37(2)(a) of the Act by failing to leave the rental unit in a reasonably clean condition. As a result, I find the landlord has met the burden of proof and I grant the landlord the full amount requested of **\$294.00** for this portion of their claim.

**Item 4** – As this portion of the landlord's claim was resolved by way of a mutually settled agreement, I order the tenant to compensation the landlord the amount agreed upon during the hearing of \$429.58, which is 60% of the unpaid hydro utilities. This settlement agreement was reached in accordance with section 63 of the Act. The parties confirmed during the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of the full and final settlement of this portion of the landlords' claim. My order is made pursuant to section 62(3) of the Act.

**Item 5** - The landlord has claimed \$897.50 for loss of May 1-14, 2020 as the rental unit was not re-rented until May 15, 2020. I have reviewed the new tenancy agreement, which I find supports that new tenants paid \$897.50 from May 15, 2020 to the end of May 2020, and that monthly rent after that was \$1,795.00 per month for the new tenants. I have also considered that the tenants failed to return the rental unit keys and vacate until May 9, 2020. I also find there is insufficient evidence before me that the tenants had written permission to end the fixed term tenancy earlier than August 31, 2020.

Section 26 of the Act applies and states that rent is due on the day that it is due according to the tenancy agreement. Given the above, I find the tenants are liable for the \$897.50 amount claimed for May 1-14, 2020, as the tenants did not return the rental unit keys until May 9, 2020. I find the landlord complied with section 7 of the Act, which requires the applicant to do what is reasonable to minimize their loss, which I find the landlord did by securing new tenants who moved into the rental unit as of May 15, 2020. I afford no weight to the tenant's allegation about a murderer being the cause that they

vacated as I find the tenants did not mention “murderer” in the notice to end tenancy document submitted in evidence. In addition, I find that the tenants breached section 45(2) of the Act, which applies and states:

Section 45 of the *Act* states:

**45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that**

**(a) is not earlier than one month after the date the landlord receives the notice,**

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

**(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[Emphasis added]

Based on the above, I find the tenants had no authority under the Act to provide a notice to end the tenancy in this matter and therefore would have been liable for loss of rent until at least August 31, 2020, had the landlord not been able to minimize their loss, which in this matter the landlord was able to do. Accordingly, I award the landlord **\$897.50** as claimed for this portion of the landlord’s claim.

As the filing fee was waived, I do not grant a filing fee under the Act.

**Monetary order** – Based on the above, I find the landlord’s application is fully successful in the amount claimed of **\$1,937.16**. I **authorize** the landlord to retain the tenants’ full **\$897.50** security deposit and **\$897.50** pet damage deposit, which have accrued \$0.00 in interest since the start of the tenancy, in partial satisfaction of the monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenants to the landlord **\$142.16**.

### Conclusion

The landlord’s claim is fully successful.

By way of a settlement agreement for item 4, I order the parties to comply with the terms of their settlement agreement as described above.

The landlord has been authorized to retain the tenants' combined deposits of \$1,795.00 and owe the balance to the landlord in the amount of \$142.16. The landlord has been granted a monetary order pursuant to section 67 of the Act in the amount of \$142.16 which must be served on the tenants and may be enforced as an order of the Provincial Court of British Columbia (Small Claims). The tenants may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to the parties as indicated above. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2020

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Residential Tenancy Branch