



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

On May 21, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing. Both Tenants attended the hearing as well, with E.L. attending as an advocate for the Tenants. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by email on May 24, 2020, and the Tenants confirmed that they received these packages. The Landlord also advised that he served additional documentary and digital evidence to the Tenants by registered mail on September 4, 2020, and they confirmed that they received this evidence also. While the Landlord did not check to see if the Tenants could view the digital evidence prior to sending it, as per Rule 3.10.5 of the Rules of Procedure, the Tenants confirmed that they were able to view this digital evidence. Based on this undisputed testimony, I am satisfied that each Tenant has been served the Notice of Hearing and evidence packages. As such, the Landlord’s evidence was accepted and will be considered when rendering this Decision.

The Tenants advised that they did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2019 as a fixed term tenancy for one year, ending September 30, 2020. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on December 31, 2019. Rent was established at \$2,100.00 per month and was due on the 30<sup>th</sup> day of each month. A security deposit of \$1,050.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection report was conducted on October 1, 2019 and that a move-out inspection report was conducted on December 31, 2019; however, neither Tenant signed the move-out report. The Tenants provided their forwarding address by email to the Landlord on May 7, 2020. The move-in and move-out inspection reports were submitted as documentary evidence.

The Landlord advised that he is seeking compensation in the amount of **\$5,600.00** for rental loss as the Tenants notified the Landlord via email on November 10, 2019, that they would be ending the fixed term tenancy early, effective December 31, 2019. He stated that he started advertising this rental unit online on December 3, 2019 and that he made attempts to show the unit as early as December 13, 2019. However, these showings were cancelled due to the amount of property that the Tenants had stored in the rental unit, making it difficult to tour the unit.

As of December 31, 2019, only three applications were submitted by prospective tenants and they did not qualify as suitable tenants. He submitted that approximately six prospective tenants were interested in the rental unit between January and February 2020, but he was only able to re-rent the unit as of March 7, 2020 at a reduced rent of \$1,900.00 per month. As such, the Landlord's claims for compensation owing is broken down as follows: January 2020 rent in the amount of \$2,100.00, February 2020 rent in

the amount of \$2,100.00, and \$200.00 per month from March to September 2020 due to the reduction in rent that was required to re-rent the unit.

E.L. referred to Policy Guideline # 3 with respect to the Landlord's duty to mitigate loss. She submitted that it took the Landlord two months prior to October 1, 2019 to rent the unit to the Tenants and that is suggestive that the rent for \$2,100.00 per month was not reasonable. Furthermore, it took the Landlord an additional two month to rent the unit after the Tenants gave their notice to end the tenancy. Given the housing crisis in Vancouver, it should not have taken this long to rent the unit. As such, it was her suggestion that the "rent was perhaps too high".

She then submitted that the Landlord provided insufficient evidence to demonstrate his attempts to re-rent the unit. While he posted online ads every day or two, these were nearly identical and they did not have critical information on them, nor did they contain pictures. He was in essence, spamming this online portal. In addition, as it took the Landlord two months to find the Tenants originally, he should have started to advertise immediately instead of waiting until early December 2019. He should have also lowered the asking price for rent earlier as well.

The Landlord stated that when he received the Tenants' notice to end their tenancy, he made two, separate attempts to speak with them to confirm their intentions; however, they ignored him. As well, he stated that he had family issues come up in early December 2019, leading to a delay in him advertising the rental unit. He submitted that December is not a great month for looking for prospective tenants. With respect to the online ads, he stated that pictures were included in those ads, but when an ad expires, it is not possible to post pictures anymore. Finally, he advised that the rental unit was fully renovated prior to the tenancy, so \$2,100.00 per month is a fair asking price.

E.L. questioned the Landlord's suggestion that December was a hard month to find tenants as the rental unit was vacant in August and September 2019 also. As such, this supports her suggestions that the rent was likely too high.

The Landlord countered and advised that the rent he was asking for in August 2019 was actually lower than what it was rented for to the Tenants.

The Landlord also advised that he is seeking compensation in the amount of **\$808.50** for the cost of cleaning and restoring the rental unit to a re-rentable state. He submitted that this amount was broken down as: \$400.00 for cleaning, \$100.00 for replacing a

light fixture, \$220.00 for re-painting of walls, and \$50.00 for replacing a broken drain. He hired a company to complete this work and 5% PST was added to this service.

He stated that this company had two employees spend three and a half hours cleaning the rental unit at the end of the tenancy. He submitted that the kitchen sink, windows, fridge, toilet, bathtub, stove, hood fan, bathroom sink, and floors were all dirty and in need of cleaning. He provided pictures as documentary evidence to support this claim.

Regarding the broken light, he stated that there was a light fixture at the entry of the rental unit that was broken on the side. It appeared as if the glass cover of this was broken when it was attempted to be opened. He was advised that the fixture could not be repaired but must be replaced entirely.

With respect to the painting, he stated that the rental unit was painted prior to the tenancy commencing and that the walls were dirty with "black stuff". He "believes" this company he hired advised him that the walls required re-painting and he "doesn't think they tried to clean" the walls. He provided pictures as documentary evidence to support this claim.

Finally, he advised that he found a broken drain after the Tenants vacated the rental unit. He provided pictures as documentary evidence to support this claim.

E.L. referenced Section 37 of the *Act* which states that the Tenants are required to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. She advised that the Landlord's pictures demonstrate that the rental unit was left in a reasonably clean condition at the end of the tenancy. These pictures were not persuasive in demonstrating a level of uncleanness that required three hours to clean. In fact, the Landlord's request for \$400.00 for cleaning matches the exact amount noted in the addendum of the tenancy agreement.

Regarding the broken light fixture, Tenant I.C. advised that on October 9, 2019, the bulb burnt out and she asked the Landlord for assistance. He replaced the bulb October 19, 2019 and then left as per his written statement. The Tenants were in the rental unit a few hours later when they heard a "big crash", and they discovered that the light fixture fell and that the bulb was burnt out again. They immediately advised the Landlord of this via text, but he did not respond. As a result, they had their nephew replace the bulb on October 21, 2019. They stored this broken fixture in a container beside the fridge until the end of the tenancy. She suggested that this light fixture may have been broken prior to the start of the tenancy.

E.L. suggested that the Landlord either caused this fixture to break or that it was already broken prior to the start of the tenancy.

The Landlord advised that he was notified of the bulb issue on October 19, 2019 and that he changed the lightbulb on October 24, 2019. At that point, this fixture was completely fine. He received no follow up texts from the Tenants and only discovered this broken fixture when he was conducting the move-out inspection report.

With respect to the Landlord's request for re-painting, E.L. stated that these pictures do not depict damage but appear to be dirt and scuffs. The Tenants should only be responsible for damage, and as the Landlord advised that this was not damage, but just dirt, the Tenants should not be responsible for this cost.

The Tenants did not dispute that the Landlord's claims that they broke the drain.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As all parties agreed that a move-in and move-out

inspection report was conducted with the Tenants, despite the move-out inspection not being signed, I find that the Landlord did not extinguish his right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address on May 7, 2020. As the tenancy ended on December 31, 2019, I find that May 7, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on May 21, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframe, and as the Landlord did not extinguish his right to claim against the deposit, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Regarding the Landlord's claim for compensation for rental loss, when reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on October 1, 2019, yet the tenancy

effectively ended because the Tenants gave up vacant possession of the rental unit on December 31, 2019. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence, the Tenants informed the Landlord that they would be ending their tenancy on November 10, 2019. I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss. Given that the Landlord made attempts to reach out to the Tenants to confirm that they were ending the tenancy on December 31, 2019, but received no response, I accept that this as a reasonable explanation for not advertising the rental unit immediately. In addition, I accept that this would be a time of year that fewer people would reasonably be looking to find a new place to rent.

As such, I find that the Landlord was put in a position that it would have been more difficult to rent the unit for January 1, 2020. Furthermore, based on the manner with which the Tenants stored their property, I accept that this would have made it even more difficult for the Landlord to adequately show the rental unit to prospective tenants. As a result, this only increased the likelihood that they would be responsible for any rental loss that the Landlord suffered. Overall, I am satisfied by the evidence presented that the Landlord made sufficient attempts to re-rent the unit as quickly as possible after the Tenants gave up vacant possession of the rental unit.

With respect to E.L.'s speculation that the rent was set too high and was unreasonable, I give this submission no weight. Given that the Tenants signed a tenancy agreement at this amount of rent, I am satisfied that they are bound by the terms of that agreement. I do not find that they provided any valid justification for not fulfilling their obligations or for justifiably ending this tenancy without consequences. They elected to sign this agreement of their own volition, and if it was not suitable for their needs, then there was nothing forcing them to agree to rent this unit at this amount of rent.

Consequently, I am satisfied that the Tenants are responsible for the rental loss that the Landlord is seeking compensation for. As such, I grant the Landlord a Monetary Order in the amount of **\$5,600.00**.

Regarding the Landlord's claim of \$808.50 to return the rental unit back to a re-rentable condition, the first matter I will address is with respect to the cleanliness of the rental unit. While E.L. suggested that the rental unit was left in a reasonably clean condition, I find that the pictures submitted as evidence do not support this position. Rather, I am satisfied that the Tenants did not do an adequate job of cleaning the rental unit at the end of the tenancy. However, based on the Landlord's pictures, I do not find that the Landlord has substantiated that the condition that the Tenants left the rental unit would have cost \$400.00 to return it to a re-rentable state. In my view, I am satisfied that the Landlord has corroborated that the required cleaning would have cost **\$250.00**, and I grant the Landlord a monetary award in this amount.

With respect to the broken light, the consistent evidence is that the Tenants requested that the Landlord replace a bulb for the Tenants on October 19, 2019. While the Tenants submitted that they heard this fall after the Landlord left, they testified that they advised the Landlord of this via text; however, they did not provide any evidence of such. Knowing about this claim months ago, this would have been simple evidence to submit to corroborate their explanation for this broken fixture. When reviewing the evidence and testimony, I am not satisfied on a balance of probabilities that the Tenants' portrayal of this situation to be credible or likely. As such, I am satisfied that the Landlord sufficiently established his claim for this, and I grant him a monetary award in the amount of \$100.00 plus 5% tax, totalling **\$105.00**.

With respect to the re-painting of the rental unit, the undisputed evidence is that the walls were painted prior to the start of the tenancy. When reviewing the pictures of the condition of the rental unit, given that the Tenants only lived there for three months, I am alarmed at the unacceptable condition that they left the walls in. I do not accept that this is general wear and tear, and I am satisfied that this needed to be rectified. As such, I grant the Landlord a monetary award in the amount of \$220.00 plus 5% tax, totalling **\$231.00**.

Finally, with respect to the broken drain, as the Tenants do not dispute this damage, I grant the Landlord a monetary award in the amount of \$50.00 plus 5% tax, totalling **\$52.50**.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.



Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

January 2020 rental loss	\$2,100.00
February 2020 rental loss	\$2,100.00
March to September 2020 reduction of rent	\$1,400.00
Cleaning	\$250.00
Broken light fixture	\$105.00
Re-painting	\$231.00
Broken drain	\$52.50
Recovery of filing fee	\$100.00
Security deposit	-\$1,050.00
<b>TOTAL MONETARY AWARD</b>	<b>\$5,288.50</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$5,288.50** in the above terms, and the Tenants 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: September 24, 2020

---

Residential Tenancy Branch