



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Elevate Performance Realty Sprenkels and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S, MNRL-S, MNDL-S, FFL

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 and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord's agent TS attended ("the landlord"). The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 13, 2020, deemed received by the tenant under section 90 of the *Act* five days later.

The landlord provided the Canada Post Tracking Number in support of service. The landlord testified that the landlord sent the documents to the forwarding address provided at the end of June 2020 by the tenant. I have considered the uncontradicted testimony of the landlord; pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution as required on July 18, 2020.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twelve 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 was provided.

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Issue(s) to be Decided

Is the landlord entitled to for 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*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

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Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The fixed term tenancy began on October 17, 2020 for monthly rental of \$3,000.00 payable on the first of the month. The tenancy was scheduled to end on May 31, 2020. At the beginning of the tenancy, the tenant provided a security deposit of \$1,500.00. The landlord submitted a copy of the tenancy agreement.

The landlord based the claim for liquidated damages on a provision of the tenancy agreement which stated that, if the tenant vacated the unit prior to the end of the term, the tenant is required to pay the landlord liquidated damages in the amount of \$400.00.

A condition inspection was not conducted on moving out as the tenant did not inform the landlord when he intended to vacate; the landlord learned of his departure on May 5, 2020 some days later. The tenant did not pay the rent owing for the month of May 2020.

The landlord received the tenant's forwarding address at the end of June 2020 and brought this application on July 7, 2020.

The landlord testified the tenant left the unit requiring considerable cleaning. The

landlord hired a cleaner (receipt submitted) and carpet cleaner. The landlord testified that bedding items in the unit were damaged beyond cleaning and required replacement at a cost of \$200.00.

The landlord testified to the expenses and requested the following monetary award:

ITEM	AMOUNT
Rent outstanding – May 2020	\$3,000.00
Liquidated Damages	\$400.00
Cleaning	\$404.25
Carpet cleaning	\$126.00
Bedding replacement	\$200.00
Filing fee	\$100.00
TOTAL CLAIM LANDLORD	\$4,230.25

The landlord requested authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total claim	\$4,230.25
(Less security deposit)	(\$1,500.00)
Monetary Award Requested	\$2,730.25

Analysis

I have considered all the submissions and refer only to key facts.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other

for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Rent

The landlord testified the tenant did not pay rent for the month of May 2020. The tenant is responsible to reimburse the landlord for rent for that month and for the liquidated damages fee pursuant to the tenancy agreement in the amount requested.

I am satisfied based on the landlord's uncontradicted testimony and evidence, that the tenant is responsible for outstanding rent as claimed.

I accordingly find the landlord has met the burden of proof with respect to this aspect of the claim. I allow the landlord an award for outstanding rent and liquidated damages as claimed.

Compensation for cleaning

I have considered all the evidence submitted by the landlord, including the testimony and the receipt for the cleaner.

Considering the evidence and testimony, I accept the landlord's credible testimony which was partially supported by one receipt. I find that the unit needed cleaning, and that the tenant is responsible for the condition in breach of his responsibility under the Act. I find that the landlord incurred the expenses claimed with respect to the damages; I find the expenses are reasonable in the circumstances according to the facts as I understand them. I find the landlord took all reasonable steps to mitigate expenses.

I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee of \$100.00.

In summary, I find the landlord is entitled to a monetary award in the amount requested of **\$4,230.25**.

Security Deposit

The award is offset pursuant to the provisions of section 72 by \$1,500.00 being the amount the amount of the security deposit paid by the tenant.

Summary

I grant a monetary order to the landlord in the amount of **\$2,282.57** calculated as follows:

ITEM	AMOUNT
Total award to the landlord (table above)	\$4,230.25
(Less security deposit)	(\$1,500.00)
Monetary Order – Landlord	\$2,730.25

Conclusion

I grant a monetary order to the landlord in the amount of **\$2,730.25**. This order must be served on the tenant. This order may be filed and enforced in the Courts 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: October 29, 2020

Residential Tenancy Branch