



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on August 7, 2020, wherein the Landlords sought monetary compensation from the Tenant in the amount of \$19,400.78 for unpaid rent and other losses, authority to retain the Tenant's security and pet damage deposit and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for 1:30 p.m. on November 27, 2020. Only the Landlord's Representative, M.X., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:47 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Representative and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. M.X. testified that they served the Tenant with the Notice of Hearing and the Application by registered mail on August 17, 2020. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. Documentary evidence provided by Canada Post confirms that the Tenant received the package on August 19, 2020. I accept the Landlord's evidence with respect to service and I find the Tenant was duly served as of August 19, 2020 and I proceeded with the hearing in their absence.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee.

### Background and Evidence

The Landlord, J.S., filed an affidavit in evidence which set out the background facts as follows. This fixed term tenancy began on April 15, 2020 and was set to end on March 31, 2021. Monthly rent was \$3,000.00 and the Tenant paid a \$1,500.00 security deposit and a \$1,500.00 pet damage deposit. As a further term of the tenancy the Tenant was to pay for all utilities and attend to yard maintenance.

The tenancy ended on August 5, 2020. At the time the tenancy ended the Tenant was in arrears of his rent payments in the amount of \$9,000.00 for June, July and August 2020. The Landlord sought compensation for this amount.

The Landlord deposed that the Tenant also failed to care for the yard and left the rental unit unclean and damaged. At paragraph 18 of the Landlord's Affidavit the Landlord set out the condition of the rental unit as follows:

- (a) extensive damage to the garden and landscaping, including overgrown lawn and hedges and an over abundance of weeds;
- (b) a stench of dog urine throughout including stains on the carpet;
- (c) dog feces on the bottom of the window coverings;
- (d) water egress from the kitchen sink;
- (e) water damage in the office;
- (f) the interior was not cleaned;
- (g) holes in the wall from mounting a television in two rooms;
- (h) damage to the deck;
- (i) rat infestation in the garage due to the Tenant leaving garbage in the garage for extended periods of time;
- (j) garbage and personal items left in the property

In the Application before me the Landlord sought the sum of \$5,452.22 for the following:

Outstanding rent	\$9,000.00
Carpet cleaning	\$525.00
landscaping	\$2,250.00
insurance deductible for water damage	\$2,500.00
Fortis Gas	\$177.22
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$14,552.22</b>

In support of the above amounts the Landlord provided photos of the rental unit as well as receipts for the related expenses.

### Analysis

In this section reference will be made to the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

After consideration of the undisputed evidence before me and on a balance of probabilities I find as follows.

Section 26 of the *Act* provides that a tenant must pay rent when rent is due. I accept the Landlord's evidence that the Tenant failed to pay the June, July and August rent as required. I therefore award the Landlord compensation for the unpaid rent of **\$9,000.00**.

Based on the affidavit material before me as well as the photos attached as exhibits to that affidavit, I am satisfied the carpets required cleaning at the end of this tenancy. I therefore award the Landlord the **\$525.00** claimed for reimbursement for the cost of cleaning the carpets.

The photos of the rental unit show the yard as being significantly overgrown and not cared for. I find the Tenant breached the tenancy agreement by not tending to the yard work and landscaping as agreed. I also find the amount claimed by the Landlord,

**\$2,250.00**, to be reasonable based on the condition of the yard at the end of the tenancy and the amount of work it would have required to bring the landscaping back to a reasonable standard. I therefore award the Landlord related compensation.

The Landlord deposed that the tenant caused water damage to the kitchen and office in the rental unit. In support the Landlord provided photos of the damage. The Landlord further deposed that they initiated a claim with his insurer for water damage and was informed by the insurance adjuster that the cost to repair the damage would be between \$15,000.00 and \$20,000.00. On October 8, 2020 the Landlord paid the deductible of \$2,500.00 to have the water damage repaired by the insurer. I accept the Landlord's undisputed evidence in this regard and find the Landlords are entitled to recover the **\$2,500.00** insurance deductible they paid as a result of water damage caused by the Tenant.

As a term of the tenancy agreement the Tenant was obligated to pay the utilities. I accept the Landlord's evidence, including the gas utility invoice provided in evidence, that the Tenant owed the sum of **\$177.22** for the gas utility when the tenancy ended. The Landlord is entitled to recover this sum.

Having been successful in their application, I award the Landlords the **\$100.00** filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Landlords' claim for monetary compensation from the Tenant is granted. The Landlord is entitled to the sum of **\$14,552.22** for the following:

Outstanding rent	\$9,000.00
Carpet cleaning	\$525.00
landscaping	\$2,250.00
insurance deductible for water damage	\$2,500.00
Fortis Gas	\$177.22
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$14,552.22</b>

I authorize the Landlords to retain the Tenant's \$1,500.00 security deposit and \$1,500.00 pet damage deposit towards the \$14,552.22 awarded and I grant the Landlords a Monetary Order for the balance due in the amount of **\$11,552.22**. This

Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court, Small Claims Division.

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: November 30, 2020

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Residential Tenancy Branch