



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL, MNDCL, FFL

### Introduction

On August 6, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, damages, compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 21-minute hearing. The Landlord testified that the Notice of Dispute Resolution Proceeding package was sent to the Tenant by registered mail on August 19, 2020. The Landlord provided the tracking number for the registered mail and stated that, according to the Canada Post website, the package was delivered to the Tenant’s forwarding address on August 24, 2020. I find that the Tenant is deemed to have received the Notice of Dispute Resolution Proceeding on August 29, 2020, in accordance with Sections 89 and 90 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, 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 receive a Monetary Order for compensation, in accordance with section 67 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 submitted a Tenancy Agreement and stated that the month-to-month tenancy began on December 1, 2019 and the monthly rent was \$1,300.00 a month.

The Landlord testified that he had been granted an Order of Possession and Monetary Order during an earlier hearing and that, regardless of the Order of Possession for mid-May 2020, the Tenant occupied the rental unit until July 20, 2020, when bailiffs attended to remove the Tenant's possessions from the rental unit.

The Landlord did not received rent from the Tenant for June or July 2020. The Landlord is claiming unpaid rent for the month of June 2020 in the amount of \$1,300.00 and for 20 days in July 2020, in the amount of \$839.00. The Landlord's claim for unpaid rent is \$2,139.00.

The Landlord submitted pictures of scattered used diapers, bags full of garbage and a discarded and broken fridge left outside of the rental unit by the Tenant. The Landlord provided a bill for \$190.00, dated May 15, 2020, for the removal of these items and transport to the local dump.

The Landlord submitted pictures of garbage left throughout the rental unit by the Tenant. An invoice, dated July 22, 2020, indicated that the contractors "removed the tenants leftover refuse and garbage to dump. Cleaned fridge stove, toilet, tub, bathroom sink, kitchen sink, and all kitchen cabinets, removed expired stinking food, applied mop in 2 bedrooms, hallway, washroom, kitchen and living room". Also included in the invoice was a bill for \$45.00 to replace the damaged lock and hinge of the front door and \$115.00 to replace the damaged door jam of bedroom #1. The total bill is \$874.00.

The Landlord stated he served the Order of Possession to the Tenant; however, she failed to provide occupancy of the rental unit and the Landlord was forced to hire bailiffs

to remove the Tenant and her property. The Landlord submitted a copy of the money order, in the amount of \$80.00, to pay the Minister of Finance for the application for a Writ of Possession. The Landlord also incurred a \$1,383.00 bill for the services of the bailiff.

The Landlord is requesting compensation for the unpaid rent, damages and bailiff services as a result of the Tenant failing to abide by the Act and the Tenancy Agreement.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for compensation of unpaid rent in the amount of \$2,139.00.

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.

The Landlord provided testimony, submitted pictures and an invoice for the clean-up of garbage from outside of the rental unit. I find that the Tenant failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property, pursuant to section 32 of the Act. I find that the Landlord has established a monetary claim of \$190.00.

The Landlord provided testimony, submitted pictures and provided an invoice for the damage and cleaning that was required in the rental unit after the Tenant was moved out. I accept that the Landlord incurred costs for the removal of garbage and cleaning of the rental unit; however, as the Landlord has not provided any evidence regarding the condition of the front door or bedroom door at the start of the tenancy, I do not award the Landlord for these specific repairs. As such, I find the Landlord has established a monetary claim of \$714.00.

I accept the Landlord's undisputed testimony that the Tenant failed to move out of the rental unit after being served the Order of Possession. The Landlord incurred costs as a result of the Tenant continuing to occupy the rental unit, pursuant to section 57 of the Act. I accept the Landlord's evidence that he had to pay \$1,463.00 for the services of a bailiff. I find the Landlord has established a monetary claim in this amount.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent, compensation for damages and bailiff fees, and the filing fee for this Application:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for June 1 – July 20, 2020	\$2,139.00
Clean-up and hauling of garbage	190.00
Cleaning interior and garbage disposal from rental unit	714.00
Writ of Possession and Bailiffs	1,463.00
Filing Fee for this Application	100.00

<b>Total Monetary Order</b>	<b>\$4,606.00</b>
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Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$4,606.00. 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: December 2, 2020

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Residential Tenancy Branch