



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL, MNRL, 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 attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 42 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.

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

August 21, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on August 26, 2020.

The landlord provided the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on August 26, 2020 pursuant to the *Act*.

#### *Preliminary Matter – Amendment*

The landlord requested an amendment to the landlord's application to increase the monetary order requested for outstanding rent from \$10,500.00 to \$14,700 to include additional outstanding rent for the months following the filing of the application. The landlord's application, submitted in August 2019, pre-dated the due date for rent for September and October 2020 and as such the landlord's claim does not reflect outstanding rent for those months.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months following the file of the Application. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's overall claim outstanding rent to \$14,700.00.

#### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

#### Background and Evidence

The landlord submitted an extensive evidence package including many photographs, documents, strata notices, text messages and correspondence between the parties. Not all of this evidence is referenced in my Decision. I will refer only to key, relevant facts.

The landlord submitted that the tenancy started on November 1, 2017 for a fixed term that expired on October 31, 2018. Upon expiration of the fixed term the tenancy continued on a month to month basis. The tenant paid a security deposit of \$1,000.00 and the monthly rent was originally set at \$2,000.00 but it increased over time to \$2,100.00 payable on the first day of every month.

The landlord submitted that the tenant started damaging the rental unit and there were numerous complaints of excessive noise and the tenant's child throwing rocks from the balcony of the rental unit, on the 17th floor, among other things.

The landlord testified he obtained an Order of Possession on August 14, 2020 in a previous hearing referenced on the first page.

The landlord testified the tenant owes \$14,700.00 in outstanding rent to October 2020.

The landlord testified that the tenant's disruptive behaviour resulted in the strata levying fines of \$2,650.00 which the landlord paid.

The landlord testified that the landlord hired a bailiff to move the tenant out of the, thereby incurring an expense of \$1,993.03 unit on October 17, 2020 and \$120.00 for the court filing. The landlord submitted the receipts.

When the tenant vacated the unit, the landlord discovered extensive damage to the unit such as holes in the walls consistent with the walls being repeatedly punched by a fist. There was other widespread surface damage which extended to the ceiling, all of which were covered with food splatters and drawings. The landlord received an estimate of \$5,670.00 to repair and repaint the unit because of the damage caused by the tenant. Because of the pandemic and a desire to save money, the landlord did the work himself which is testified resulted in greater time and expenses than anticipated. He requested reimbursement of the amount of the estimate of \$5,670.00.

The landlord discovered the patio door was smashed and unrepairable. The landlord replaced the glass at a cost of \$812.70 for which he submitted a receipt and for which the landlord requested reimbursement.

The landlord testified the unit required considerable cleaning for which he incurred an expense of \$1,320.00 for which he submitted a receipt and for which the landlord requested reimbursement.

The landlord's claims are summarized as follows:

ITEM	AMOUNT
Rent outstanding	\$14,700.00
Bailiffs fees	\$1,993.03
Court filing fee	\$120.00
Strata fines	\$2,650.00
Repair, drywall, painting	\$5,670.00
Patio door	\$812.70
Cleaning	\$1,320.00
Filing fee	\$100.00
<b>TOTAL CLAIM LANDLORD</b>	<b>\$27,365.73</b>

The landlord testified as follows. The tenant did not provide a forwarding address. A condition inspection was conducted on moving in which was not submitted. A condition inspection was not conducted on moving out.

The landlord submitted several photographs which he testified were taken before the tenant moved in. The photos indicated the unit was in good condition on moving in.

The landlord holds the security deposit of \$1,000.00 which he requested be applied to the monetary award.

### 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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?

4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the above four tests are considered in my findings.

Based on the uncontradicted evidence of the landlord and the comprehensive, credible documentary evidence, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claim. I give substantial weight to the landlord's evidence.

Contrary to the tenancy agreement and the Act, I find the tenant failed to pay rent and reimburse the landlord for expenses for which the tenant was responsible. I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord reasonably seeks compensation. I find the landlord has met the burden of proof with respect to the amount of the outstanding rent and expenses claimed. I find the landlord has made reasonable efforts to mitigate loss.

Therefore, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$27,365.73 for unpaid rent, compensation for the damages and loss, and reimbursement of the filing fee as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$14,700.00

Bailiffs' fees	\$1,993.03
Court filing fee	\$120.00
Strata fines	\$2,650.00
Repair, drywall, painting	\$5,670.00
Patio door	\$812.70
Cleaning	\$1,320.00
Filing fee	\$100.00
<b>TOTAL AWARD LANDLORD</b>	<b>\$27,365.73</b>

Further to the offsetting provisions under section 72, the landlord is entitled to apply the security deposit of \$1,000.00 to the monetary award. The landlord is awarded a Monetary Order in the amount of **\$27,365.73** as set out in the following table:

<b>ITEM</b>	<b>AMOUNT</b>
Award to landlord (above table)	\$27,365.73
(Less security deposit)	(\$1,000.00)
<b>MONETARY ORDER</b>	<b>\$27,365.73</b>

### Conclusion

I grant a Monetary Order to the landlord in the amount of **\$27,365.73**.

This Monetary Order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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 04, 2020

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Residential Tenancy Branch