



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, MNDCT, CNR, RP, FFT, OPR-PP, MNRL, MNDCL

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. The landlord testified that he did not receive any documentation from the tenant. The tenant advised that he submitted his documentation to the Branch, but not the landlord. Residential Tenancy Branch Rule of Procedure 3.14 addresses the issue before me as follows:

*Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

As the tenant did not provide the landlord copies of his documentary and digital evidence, it was not considered as part of this hearing. The tenant's testimony was considered in making this decision.

#### Preliminary Issue – Tenancy is over

At the outset of the hearing both parties confirmed that the tenant moved out at the end of October 2020. Both parties further indicated that the only item each is seeking is a monetary order. The landlord is seeking a monetary order for unpaid rent, and the tenant is seeking a monetary order for compensation and the recovery of the filing fee. All other items applied for by the parties as noted above, are dismissed without leave to reapply. The hearing proceeded and completed on that basis.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

#### Background and Evidence

The tenant gave the following testimony. The tenancy began on October 1, 2018 with the monthly rent of \$1050.00 due on the first of each month. The tenant paid a \$500.00 security deposit which the landlord still holds. The tenant testified that he did not pay the rent for the month of October 2020 or the first installment of the COVID-19 repayment plan of \$182.15. The tenant testified that he moved out on October 30, 2020. The tenant testified that the unit was unlivable and that it had numerous deficiencies since he moved in. The tenant testified that the unit had the following problems; the windows didn't have proper insulation causing excessive condensation, the unit had a water leak for 3-4 months, the landlord didn't fix the moldy drywall for 4 months, no kitchen cabinets for two months, ongoing renovation to the kitchen and bathroom for several months. The tenant testified that he requested compensation from the landlord but was

always told that they would talk about it another time. The tenant is seeking \$3233.00 in compensation plus the \$100.00 filing fee.

The landlord gave the following testimony. The landlord testified that the tenant was given a Rental Repayment Plan for rent affected due to COVID-19. The first payment of \$182.15 was due on October 1, 2020 along with the monthly rent of \$1050.00. The tenant did not pay either and on October 2, 2020 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord seeks a monetary order of \$1232.15.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 that 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 claimant must provide **sufficient evidence of the following four elements**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

### Tenant Compensation \$3233.00

The tenant alleges that the unit had many deficiencies but despite his attempts to have the landlord repair them, the unit remained "unlivable". The landlord provided disputing testimony and documentary evidence to refute that claim. The tenant did not provide supporting documentation to corroborate his claim. As noted above, the party seeking compensation is required to provide sufficient evidence of all four elements to be successful in their claim. The tenant has failed to provide sufficient evidence for any of the elements, accordingly; I dismiss the tenants application in its entirety.

Landlords Claim - \$1232.15

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The tenant did not dispute the amount the landlord was claiming but felt justified in withholding payment for alleged deficiencies in the unit. The tenant did not have the landlords consent to withhold the rent or an order from the Branch entitling him to a rent reduction, accordingly; I find that the landlord is entitled to the \$1050.00 in unpaid rent for October 2020 and the first installment of the repayment plan for October 2020 of \$182.15 for a total award of \$1232.15. Applying the offsetting provision under Section 72 of the *Act*, the landlord is entitled to retain the \$500.00 deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$1232.15. I order that the landlord retain the \$500.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$732.15. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant’s application is dismissed in its entirety without leave to reapply.

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 17, 2020

---

Residential Tenancy Branch