



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 29, 2017, and ended on September 30, 2019. Both parties agreed that the tenant gave notice on September 24, 2019 that he

would be moving out on September 30, 2019. Monthly rent was set at \$1,100.00, payable on the first of the month. It is disputed by both parties as to whether the tenant's deposits have been returned or not.

The landlord is requesting monetary compensation as follows:

1) Coit Carpet Cleaning-Stain Removal	\$237.50
2) Drywall Repair-Rona	85.58
3) Paint & Supplies -Chilliwack Decorating Centre	115.06
4) Plug In Repairs – Rona	129.20
5) Weather Strip – Paint Supplies- Home Depot	88.89
6) Paint – Chilliwack Décor Centre	163.66
7) Walmart Gift Card for Drywall Service Payment	100.00
8) London Drugs- Cleaning Supplies	20.13
9) Paint Supplies- Chilliwack Décor Centre	10.35
10)Dead Bolt Cleaners – Home Depot	84.10
11)Characters – Dinner	59.86
12)A&W – breakfast	24.53
13)Paint Supplies – Chilliwack Décor Center	37.39
14)Esso- Fuel	65.60
15)Esso – Fuel	25.00
16)Esso – Fuel	96.26
17)Home Depot – Toilet Seat	23.49
18)Chevron - Fuel	72.68
19)Paint – Sherwin Williams	66.97
20)Cookies - breakfast	30.14
21)Rona – Furnace Filter	34.71
22)Esso – fuel	52.80
23)Rona – Blinds, Closet Door Sweep etc	525.27
24)Paint Supplies	5.23
25)Paint Supplies	27.42
26)Rona – Light Fixture Plate Covers	133.03
27)Rona – Utility Matt	23.07
28)Home Depot – Lighting & Elec Fix	326.35
29)End of the Roll – Carpet & Underlay	4013.24
30)Staples – Copies	2.15

31) Labour for Repairs – 61 hours x \$33/hour	2,013.00
32) Garbage Removal and Disposal of Tires	100.00
33) Amazon – Blind Pulls	38.62
34) Loss of half month's rent – October 2019	550.00
35) Lawn Care – Pet Damage	210.00
36) Walmart (misplaced receipt), printing of pictures	35.22
37) Home Depot – Shower Stall	439.95
38) Home Depot – Vanity	288.74
39) Labour to install shower stall and cabinet 8 hours x \$33/hour	264.00
40) Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$10,591.11</b>

The landlord testified that she was able to mitigate her loss of rental income by finding a new tenant for October 15, 2019 at the same monthly rent. The landlord is seeking half a month of lost rental income for October 2019.

The landlord is also seeking monetary orders for the losses associated with the tenant's failure to leave the home in reasonably clean and undamaged condition. The landlord testified that the tenant had 2 large dogs in the rental unit without her permission, which contributed to the damage in the home. The landlord testified that she had arranged a move-out inspection with the tenant, but the tenant failed to attend. The landlord testified that she had purchased the home in 2016, which was approximately 40 years old, but was renovated.

The landlord also submitted receipts for various expenses she had incurred such as meals, fuel for travelling to and from the home, and moving items to the dump, and expenses associated with filing this application.

The tenant responded that the landlord did not comply with the act in arranging a final move-out inspection. The tenant is not disputing the cleaning costs, and damage to the baseboards, the closet door, but is disputing the remainder of the claims. The tenant argued that in the absence of a proper move-out inspection, the landlord failed to provide sufficient evidence that the damage was caused by him or his dogs during this tenancy, or that the damage exceeded wear and tear.

The tenant argued that the lawn was shared with the other tenant who resided upstairs, who also had a dog. The landlord argued that the dog upstairs was much smaller, and the tenant did not clean after his two large dogs.

The tenant also argued the cost of labour claimed by the landlord. The landlord testified that she had mitigated the costs by performing the work herself, or by compensating the upstairs tenant.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 45 of the *Residential Tenancy Act* reads in part as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the tenant did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. I am satisfied that although the landlord attempted to mitigate her losses by re-renting the suite as soon as possible, she lost half a month's rent due to the tenant's failure to give proper notice under the *Act*. Accordingly, I allow the landlord's monetary claim of lost rental income in the amount of half a month's rent.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. As stated above, the landlord has the burden of proof in supporting their claim.

Sections 35 and 36 of the *Act* set out the requirements for a move-out inspection. Section 35(2) of the *Act* requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

***Two opportunities for inspection***

**17** (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

*(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*

*(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*

(3) *When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

As stated above, the landlord's final opportunity to attend an inspection must be proposed to the tenant in the approved form. The landlord failed to provide the tenant with the proposed time and date in the approved form, specifically RTB Form *RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection*. I am not satisfied that the landlord has met the requirements of the *Regulation* and *Act*.

Despite the photos, estimates, move-in inspection report, and receipts submitted by the landlord in support of the landlord's monetary claim, I am not satisfied that the landlord fulfilled their obligation to support what damage was caused by the tenant during this tenancy beyond what the tenant has agreed to. As stated above, I find that the landlord failed to provide the tenant with a final opportunity to attend an inspection in the approved form. As a formal move-out inspection was not completed with the tenant, I

find that the landlord has failed to support what damage was caused by tenant during this tenancy beyond regular wear and tear.

As the tenant agreed to the cleaning, I allow the following monetary orders for cleaning and cleaning supplies. I find that the tenant's dogs did some damage to the home, and accordingly, I allow the following monetary orders for repairs to the drywall and \$100.00 monetary incentive for labour. I also find that the tenant failed to properly dispose of his tires and garbage, and allow the landlord's monetary claim in the amount of \$100.00.

1) Coit Carpet Cleaning-Stain Removal	\$237.50
2) Drywall Repair-Rona	85.58
3) Walmart Gift Card for Drywall Service Payment	100.00
4) London Drugs- Cleaning Supplies	20.13
5) Garbage Removal and Disposal of Tires	100.00
<b>Total Monetary Award</b>	<b>\$ 543.21</b>

In light of the other claims, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant was solely responsible for the damage during this tenancy. As stated above, I find that the landlord failed to support that a proper move-out inspection was completed with the tenant. I also find that although the landlord believes that the tenant's larger dogs damaged the lawn, the lawn was shared with the upstairs tenant who also had a dog. In light of the fact that this area was shared between multiple tenants and their dogs, I am not satisfied that the damage can be attributed to the tenant alone. Furthermore, I am not satisfied that the expenses claimed such as fuel and dining were incurred directly and solely due to the tenant's contravention of the Act. Accordingly, I dismiss the remainder of the landlord's monetary claims without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application. I note that section 72 of the *Act* does not allow the applicant to claim for losses associated with filing an application beyond the \$100.00 filing fee. Accordingly, I dismiss the landlord's other monetary claims related to filing this application without leave to reapply.

**Conclusion**

I issue a Monetary Order in the amount of \$1,193.21 in the landlord's favour as set out in the table below. The remainder of the landlord's claims are dismissed without leave to reapply.

1) Coit Carpet Cleaning-Stain Removal	\$237.50
2) Drywall Repair-Rona	85.58
3) Walmart Gift Card for Drywall Service Payment	100.00
4) London Drugs- Cleaning Supplies	20.13
5) Garbage Removal and Disposal of Tires	100.00
6) Loss of half month's rent – October 2019	550.00
7) Half of Filing Fee	50.00
<b>Total Monetary Award</b>	<b>\$ 1,143.21</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 13, 2021

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Residential Tenancy Branch