



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

On September 28, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and damages to the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

### Preliminary Matter

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 25-minute hearing. The Landlord testified that he was granted the ability to serve the Tenant the Notice of Dispute Resolution Proceeding package via email in a Substituted Service Decision, dated October 20, 2020.

The Landlord submitted a copy of the email, with the Notice of Dispute Resolution Proceeding package attached, that he sent to the Tenant on October 22, 2020, as directed by the adjudicator in the October 20, 2020 Decision. As a result, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding on October 25, 2020, in accordance with Section 89(1)(e) 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 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 be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 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 provided the following undisputed testimony:

The Landlord submitted a Tenancy Agreement that documented that the one-year, fixed-term tenancy started on November 11, 2019. The monthly rent was \$3,100.00 and the Landlord collected and still holds a security deposit of \$1,550.00. The Tenant moved out of the rental unit on September 20 or 21, 2021.

The Landlord acknowledged that he served a 10-Day Notice to End Tenancy to the Tenant in September of 2020 and that the Landlord had not provided a repayment plan to the Tenant for the unpaid affected rent that had accrued during the emergency/specified period between March 18 and August 17, 2020.

The Landlord submitted that the Tenant did receive the rental supplement for five months; however, the Tenant did not pay the full months' rent for the following months:

| Item  | Amount            |
|---|-------------------|
| Unpaid April 2020 Rent                                    | \$1,300.00        |
| Unpaid June 2020 Rent                                     | 1,300.00          |
| Unpaid August 2020 Rent                                   | 1,300.00          |
| Unpaid September 2020 Rent (20 days-\$735.00)             | 1,331.67          |
| <b>Total Unpaid Rent between April and September 2020</b> | <b>\$5,231.67</b> |

The Landlord stated that the Tenant paid \$735.00 towards September 2020 rent and moved out on September 21, 2020.

The Landlord has requested a Monetary Order for the unpaid rent and to apply the security deposit against this claim.

The Landlord did not provide any testimony or enter any evidence regarding the claim for damages.

### 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 in unpaid rent, in the amount of \$5,231.67.

I dismiss the Landlord's claim for damages to the rental unit as he failed to provide sufficient evidence to support this claim. However, I find that the Landlord's Application for a Monetary Order for unpaid rent 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.

The Landlord has established a monetary claim, in the amount of \$5,331.67, which includes \$5,231.67 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$1,550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$3,781.67 in accordance with section 67 of the Act.

### Conclusion

I dismiss the Landlord's claim for damages to the rental unit without leave to reapply.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$3,781.67. 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: January 20, 2021

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Residential Tenancy Branch