



# 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

The landlord applied for compensation under section 67 of the *Residential Tenancy Act* ("Act"), and to recover the cost of the filing fee under section 72 of the Act.

An agent for the landlord attended the hearing on February 5, 2021, which was held by teleconference. The tenant did not attend the hearing, which lasted 22 minutes.

The landlord gave evidence that the Notice of Dispute Resolution Proceeding was served on the tenant's place of employment by Canada Post registered mail on November 4, 2020. The delivery confirmation documentation was in evidence and the landlord explained that the place of employment had been confirmed as being current and correct. It is noted that, despite repeated requests, the tenant did not provide his forwarding address to the landlord. Based on this undisputed testimony and documentary evidence I find that the tenant was served with the Notice of Dispute Resolution Proceeding in compliance with sections 89(1)(e) and 71(1) of the Act.

### Issues

Is the landlord entitled to compensation?

### Background and Evidence

The tenancy began on February 25, 2019 and ended on September 30, 2020. Monthly rent was \$1,850.00 and the tenant paid a security deposit of \$925.00. It should be noted that due to an "administrative error," the landlord used part of the security deposit to pay for cleaning. The balance of the security deposit currently still in trust is \$418.77. A copy of the written tenancy agreement was in evidence.

The landlord seeks \$1,850.00 for unpaid rent, \$172.00 for cleaning, \$2,135.09 for repairs, \$80.00 for door repairs, \$165.00 for fob and key replacement expenses and a patio table, \$235.00 for management fees, and \$100.00 for the filing fee cost. I explained that I would consider all claims except for the \$235.00 management fee, as those are considered litigation costs for which I am unable to grant compensation. A copy of a monetary order worksheet was, I note, submitted in evidence.

Copies of a condition inspection report at the start and end of tenancy were submitted into evidence, along with extensive photographs of the rental unit and the damage and cleaning that was required, and copies of invoices and estimates were all submitted. Also, in evidence was copy of the tenant's rent ledger showing the \$1,850.00 of arrears.

### 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 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 37(2)(a) of the Act requires a tenant to return all keys and other means of access to the landlord upon leaving the rental unit.

In this case, the tenant breached both sections 37(2)(a) and (b) of the Act. The condition inspection report and photographs provide evidence that this was the case. The landlord incurred costs related to cleaning and repairs and related losses. The amounts claimed are reasonable.

Taking into consideration all the undisputed 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 \$2,552.09 for losses incurred from the tenant's breach of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under a tenancy agreement unless the tenant has a right under the Act to not pay the rent.

The landlord gave oral and documentary evidence that the tenant owes \$1,850.00 in rent arrears. There is no evidence for me to find that the tenant had a right not to pay. Thus, after considering all of the undisputed oral 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 \$1,850.00 in rent arrears.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful, I grant their claim for the \$100.00 filing fee.

The total awarded is therefore \$4,502.09. Pursuant to section 38(4)(b) of the Act I authorize the landlord to retain the \$418.37 balance of the security deposit in partial satisfaction of the total award. The remaining amount of \$4,083.72 is granted by way of a monetary order which is issued in conjunction with this decision.

### Conclusion

**The landlord's application is hereby granted.**

I grant the landlord a monetary order of \$4,083.72, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 5, 2021

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Residential Tenancy Branch