



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNRL-S, MNDCL-S, FFL

### Introduction

The landlords applied for an order of possession under sections 49 and 66 of the *Residential Tenancy Act* ("Act") and for compensation under section 67 of the Act. They also seek recovery of the filing fee under section 72 of the Act. It should be noted that the tenant has vacated the rental unit and as such the landlords no longer required an order of possession.

Both parties, along with family of both parties who assisted, attended the hearing on February 9, 2021, which was held by teleconference.

### Preliminary Issue: Service of Evidence

The landlords confirmed that they served copies of their evidence on the tenant. The tenant stated that he served copies of his evidence on the landlords by registered mail on January 29, 2021. However, the landlords' representative testified that they have not received any of the tenant's evidence.

The tenant provided a copy of the Canada Post registered mail tracking number, which is included on the cover page to this decision for reference. The Canada Post tracking website ([www.canadapost.ca/track-reperage/en#/home](http://www.canadapost.ca/track-reperage/en#/home)) indicated that the tenant's package was accepted at 4:32 PM on January 26, 2021 at the post office. It then went out for delivery and was processed and re-routed due to a processing delay. It was not until 10:25 AM on February 8 – the day before the hearing – that Canada Post left a notice card indicating where and when the mail could be picked up. At 2:22 PM on February 8, 2021 the item is indicated as being available for pickup at the post office. The landlords confirmed that they have not had the opportunity to check the mail and the tenant remarked that the delay that occurred is through no fault of his own. I agree with both parties.

I explained to the parties that, while the landlords have not received the tenant's evidence, I have received the evidence. I also explained that, if I found that the tenant's evidence was relevant to the issues in this dispute, or that they were relevant and had a material effect on my decision, that I would issue an interim decision and adjourn this matter. However, if I determined that the tenant's evidence was not relevant to the issues, or, that the evidence would not change the outcome, I would issue a decision.

The tenant's evidence consisted of thirteen photographs of the interior of the rental unit. The evidence also consisted of a 41-page document containing an index (and monetary reference to amounts spent), various correspondence between the tenant and the landlords regarding: (1) carpet cleaning issues and costs, (2) maintenance issues with the dwelling, (3) matters related to a two month notice to end the tenancy and references to unpaid rent, (4) a move out inspection and another reference to unpaid rent, (5) texts between the parties regarding when the tenancy would end, (6) mouse issues, and (7) more texts about when the tenant was supposed to move out. There are also emails between the parties concerning the rent and when the tenant would be moving out. Also included were a few pages of available rental listings.

The only relevant evidence submitted by the tenant concerns when he allegedly overhauled between December 21 and December 31, 2020. However, for the reasons explained below, the landlords' claim for \$895.00 for this period of time is dismissed.

### Issues

1. Are the landlords entitled to compensation?
2. Are the landlords entitled to recover the filing fee?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began December 1, 2019 and ended on December 31, 2020. The landlords' agent testified that the tenant agreed to move out on December 21, 2020 but overhauled until December 31, 2020. Monthly rent was \$2,600.00 and the tenant paid a security deposit of \$1,300.00, which is currently held in trust by the landlords. A copy of a written tenancy agreement was submitted into evidence.

The landlords seek \$500.00 for unpaid rent from July 2020, \$2,600.00 for unpaid rent from November 2020, \$895.00 for an overhold period of December 21 to December 31, 2020, \$25.00 for an NSF charge on a rent cheque, and \$100.00 for the application filing fee. The landlords' evidence included copies of a bounced \$500.00 cheque, which incurred the NSF charge, and several emails and letters in which they reference the \$2,600.00 in additional arrears.

There is, I should note, no correspondence or additional documentation or evidence supporting the landlords' claim for the overholding rent amount. It should be noted that the most recently date of evidence submissions by the landlords was December 2, 2020. Thus, the landlords had all of January 2021 to submit relevant evidence pertaining to the overhold period for which rent is purportedly owed.

The tenant testified that there were bad smells in the rental unit and that he deducted \$500.00 from the rent for July 2020 to pay for costs to clean the carpet. Regarding the \$2,600.00 from November 2020 the tenant provided an account as to difficulties he had with the provision of cheques in advance. It was unclear, however, what in fact those issues were that lead to the tenant not paying November's rent. The tenant did not testify or comment on the \$25.00 NSF fee being claimed.

Both parties briefly referred to the landlords' potential claim for compensation related to alleged damages caused to the property. However, I explained that I would not hear any evidence in respect of that future claim and that the landlords would be required to file an application for dispute resolution if they wished to pursue that matter.

### 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.

### **Claim for \$500.00 Rent Arrears**

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 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 unless the tenant has a right under the Act to deduct all or some of the rent.

Under the Act there are only four instances where a tenant has a right to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent. First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

In this dispute, the tenant's decision to self-deduct (in the words of the landlord's agent) from his rent to pay for carpet cleaning does not, I find, fall within any of the above-noted four instances, or exceptions, of when a tenant may deduct from the rent. While there may very well have been an issue with the carpet, the tenant was not legally entitled to withhold \$500.00 from the rent to deal with that issue.

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 landlords have met the onus of proving their claim for \$500.00 in unpaid July 2020 rent.

### **Claim for \$2,600.00 Rent Arrears**

In respect of the landlords' claim for rent arrears from November 2020, there is documentary evidence to support their argument that the tenant owes \$2,600.00. The tenant's explanation as to how or why a cheque never made it to the landlord is, I find, not persuasive. The tenant apparently had no difficulty in paying rent in a manner that

worked for both parties since December 2019, so I have some difficulty accepting the tenant's argument that he somehow had difficulty paying rent in November.

Thus, 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 landlords have met the onus of proving their claim for rent arrears in the amount of \$2,600.00 for November 2020.

### **Claim for \$25.00 NSF**

In respect of the landlords' claim for \$25.00 in NSF fees, the tenant did not dispute this or provide any counter-argument. As such, I consider this claim to be undisputed and I award the landlords the amount claimed.

### **Claim for \$895.00 in Overhold Rent Arrears**

While the landlords' agent testified that the tenant overheld after December 21, 2020 and did not pay rent, the tenant disputed this claim. (Indeed, the tenant claimed to have twice offered to pay rent to the landlords for this period, and the landlords failed to respond to his offers.)

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlords have failed to provide any evidence that the tenant did not pay rent for the overhold period.

Accordingly, I do not find that the landlords have met the onus proving their claim for the \$895.00 in unpaid rent and this aspect of their application is dismissed, without leave to reapply.

### **Claim for Application Filing Fee**

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 landlords were successful, I grant their claim for the \$100.00 filing fee.

### **Summary of Award, Retention of Security Deposit, and Monetary Order**

In summary, I award the landlords a total of \$3,225.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant’s \$1,300.00 security deposit in partial satisfaction of the above-noted award.

The balance of the award, in the amount of \$1,925.00, is issued by way of a monetary order. This order is issued in conjunction with this Decision, to the landlords.

### **Conclusion**

The landlords’ application is granted, in part.

I grant the landlords a monetary order in the amount of \$1,925.00, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords 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 9, 2021

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Residential Tenancy Branch