



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MND, MNR, MNSD, FFL

### Introduction

On October 8, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for loss of rent; for damage; and to retain the security deposit and or pet damage deposit in partial satisfaction of the claim.

The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

At the start of the hearing the Landlord withdrew the claim to recover unpaid rent and the claim to keep a security deposit and/or a pet damage deposit. The hearing proceeded on the Landlords claims for unpaid utilities and compensation for items taken from the rental unit.

The initial hearing continued for 93 minutes which was insufficient time for the parties to provide their evidence. The hearing was adjourned and rescheduled. The Landlord

and Tenant were sent a Notice of Dispute resolution Proceeding providing the date and time of the next hearing. The parties were cautioned that failure to attend the hearing may result in the hearing proceeding in their absence.

In addition, the Landlord was provided an opportunity to provide a more detailed monetary worksheet containing the age of each item being claimed and its value when the tenancy ended. The Landlord provided a revised worksheet and testified that a copy was served to the Tenant.

The Landlord attended the second hearing; however, the Tenant did not. The line remained open while the phone system was monitored for 36 minutes and the Tenant did not call into the hearing during this time.

My review of the Residential Tenancy Branch case management system as of the date of this Decision shows there have been no calls received from the Tenant regarding participation in the hearing.

The second hearing proceeded in the absence of the respondent / Tenant.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage?
- Is the Landlord entitled to money owed or compensation for damage or loss?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 14, 2020 on a month to month basis. Rent in the amount of \$1,350.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00 and a pet damage deposit of \$650.00. The rental unit was furnished. The Tenant is responsible to pay 25% of utility costs.

The Tenant testified that she did not sign a tenancy agreement. In reply, the Landlord testified that on March 5, 2020 the Tenant sent the Landlord an email agreeing to the terms of tenancy. The Landlord provided a copy of the tenancy agreement she sent to the Tenant and an email from the Tenant dated March 5, 2020 stating that she read over everything and all looks great. The tenancy agreement provides that rent includes furniture and the Tenant is responsible for 25% of the hydro, water, sewage, and garbage costs.

The Landlord and Tenant testified that the Tenant moved out of the rental unit on September 30, 2020.

#### Unpaid Utilities

The Landlords' application provides that the Landlord is seeking \$261.33 from the Tenant for unpaid utility costs.

The Landlord testified that due to an oversight, they did not ask the Tenant to make a payment towards these utility costs during the tenancy. The Landlord testified that they have provided the Tenant with a copy of the utility bills within their evidence disclosure documents.

In reply, the Tenant testified that on October 20, 2020 she received nine bills for the 6-month tenancy. The Tenant stated that she feels it is unfair that the bills are presented now. She testified that she can pay the utility bills.

#### Money Owed or Compensation for Damage or Loss

The Landlords application provides that the Landlord is seeking compensation of \$3,965.77 from the Tenant for items that are missing from the furnished rental unit.

The Landlord testified that she purchased the home on January 21, 2020 and decided to rent out the self-contained furnished suite. The Landlord testified that on September 30, 2020 when her husband attended the rental unit after the Tenant had moved out, it was discovered that almost everything was missing from the rental unit. The Landlord testified that many of the items that were in the furnished suite came with the purchase of the home.

The Landlord testified that the rental unit was re-rented to a new tenant and some items needed to be immediately replaced.

On February 15, 2021 prior to the second hearing, the Landlord provided a nine-page document listing 48 items that are missing from the unit. The document lists the items being claimed and whether or not the item came with the purchase of the home or was purchased separately by the Landlord. The document also provides the approximate age of the item and a replacement cost. The Landlord provided photographs of the missing items showing the items present in the rental unit at the start of the tenancy. The Landlord testified that they spent \$962.88 to replace 16 items.

The Landlord testified that they assigned a 50% depreciated value for the remaining 32 items because the items had been used. The Landlord testified that there are no receipts to prove the value of items that went missing, only quotes for their replacement cost.

When the Landlord was asked to explain why they are seeking full replacement value of 16 items, the Landlord stated that there were time constraints present regarding an new incoming occupant and also the Tenant signed the tenancy agreement that includes a term agreeing to indemnify and save harmless the Landlord for damages. The Landlord provided a copy of the tenancy agreement which provides the following:

*The Tenant(s) agree and promise to indemnify and save harmless the Landlords in respect of all liabilities, fines, suits, claims, demands, damages, and actions of any kind for which the Landlords may become liable by reason of breach of, or non-performance by the Tenant(s), or the Tenant(s)' guest(s) of any covenant, promise, agreement, or term of this agreement, or by reason of any act or default by the Tenant(s), or Tenant(s)' guest(s), or Tenant(s)' pet. This indemnity shall survive termination of this agreement.*

The Landlord referred to *Jestadt v. Performing Arts Lodge Vancouver, 2013 BCCA 183* which she submits confirms that an arbitrator under the RTA has jurisdiction to apply the common law of contract.

The Landlord submitted that at common law, when one party agrees to “save harmless” another party, it means the other party should not suffer any consequences or bear any risk in relation to the liabilities at issue. Put another way, the other party should “never have to put his hand in his pocket in respect of” the liabilities at issue.

At the first hearing, in response to the Landlords’ claims, the Tenant testified that she was living in Alberta when the keys were given to her mother. She provided testimony conforming that she told the Landlord she wanted the rental unit to be partially furnished. She stated that the Landlord did not provide her with an inventory list at the start of the tenancy. She confirmed that a mattress was thrown out. She testified that a picture and bed were moved into the basement of the house and left there. She testified that she did not take items that were not her own when she moved out.

The Tenant stated that the items being claimed by the Landlord came with the purchase of the house.

The Landlord replied that the pictures and bedframe are located in the basement; however, she clarified that these items are not part of the Landlords' claims.

As noted previously, the Tenant did not attend the second hearing.

At the second hearing the Landlord referred to text messages and emails from the Tenant acknowledging that the items were taken.

The Landlord stated that it is likely that removal of the items was an innocent mistake because the Tenants mother purchased items for the Tenant prior to her arrival and the Tenant may not have known which items were the Landlords property when she moved out.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Section 67 of the Act, Compensation for Damage or Loss provides:

*Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the parties entered into a tenancy agreement and the Tenant agreed to the terms and conditions via email on March 5, 2020.

I find that it is more likely than not that the Tenant received the Notice of Dispute Resolution Proceeding providing the date and time of the second hearing and chose to not attend and provide any further submissions in response to the Landlords' claims.

#### Unpaid Utilities

I find that the tenancy agreement required the Tenant to pay 25% of the utility costs for the residential property. I find that the Tenant did not pay her portion of the utility costs and is responsible to pay the Landlord \$261.33.

I grant the Landlord monetary compensation of \$261.33.

#### Money Owed or Compensation for Damage or Loss

I accept the Landlords' evidence that the items being claimed were present in the rental unit at the start of the tenancy. I accept the Landlord's evidence that the items being claimed were missing from the rental unit at the end of the tenancy. Based on the evidence before me, I find that the Tenant or someone acting on behalf of the Tenant removed these items from the rental unit at the end of the tenancy. I find that the Landlord has provided clear evidence identifying each item and assigning a value to each item.

The Tenant did not attend the second hearing to challenge the Landlords list or valuation. I find that the Landlords' evidence is clear and the amount of the monetary claim for loss is reasonable. I find that the Tenant is responsible for the full replacement cost of the purchased items and for the depreciated cost of the remaining missing items.

I award the Landlord the amount of \$962.88 for the items the Landlords purchased and \$2,809.55 for the depreciated value of the remaining missing items.

#### Monetary Award

I find that the Landlord has established a total monetary award of \$4,133.76 due to items missing from the rental unit, unpaid utility costs, and the \$100.00 that the Landlord paid for dispute resolution.

I grant the Landlord a monetary order in the amount of \$4,133.76. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Landlords were successful with their claims for missing items, and unpaid utility costs.

The Landlords are granted a monetary order in the amount of \$4,133.76.

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: March 17, 2021

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Residential Tenancy Branch