



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, MNRL, MNDCL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “*Act*”) for a monetary order for unpaid rent or utilities, for a monetary order for damages, for a monetary order for compensation for monetary loss or other money owed, and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Landlord’s Advocate (the “Landlord”) attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent to the Tenant by email on January 18, 2021, as permitted by the Substituted Service Decision issued by the Residential Tenancy Branch on January 13, 2021. A copy of the email was provided as evidence of service. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to a monetary order for damage?
- Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on May 1, 2018, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$3,100.00 was to be paid by the first day of each month, and the Landlord had been given a \$1,550.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that a written move-in inspection had not been completed for this tenancy. The Landlord submitted four photographs taken of the rental unit, that they testified were taken on April 30, 2018, and one photograph taken on January 29, 2020, into documentary evidence.

The Landlord testified that the tenancy ended due to a hearing with the Residential Tenancy Branch conducted on September 8, 2020. The Landlord submitted a copy of the decision, the order of possession and the monetary order issued as a result of those proceedings into documentary evidence.

The Landlord testified that they served the order of possession on the Tenant but that they had to obtain a writ of possession and hire a bailiff to remove the Tenant from the rental unit. The Landlord testified that the Bailiff removed the Tenant and the Tenant's possession on October 9, 2020. The Landlord is requesting the recovery of their bailiff cost, in the amount of \$2,400.00 and the recovery of their court fees in the amount of \$120.00 to obtain the writ of possession from the Law Courts. The Landlord submitted a copy of the Bailiff invoice and the court invoice into documentary evidence.

The Landlord testified that the Tenant had not paid the rent for the rental unit between September 1, 2020 to October 9, 2020, in the amount of \$4,000.00, consisting of \$3,100.00 for September 2020 and \$900.00 for October 2020 at the per diem rate of \$100.00 per day. The Landlord is requesting the recovery of the unpaid rent for this tenancy.

The Landlord testified that the rental unit was returned to them uncleaned and that it cost them \$1,134.91 to have the rental unit cleaned at the end of the tenancy, consisting of \$392.49 for carpet cleaning, \$280.00 in junk removal and \$462.43 for cleaners. The Landlord submitted 23 photographs that they testified were taken October 10, 2020, and three invoices into documentary evidence to support their claim. The Landlord is requesting the recovery of their cleaning costs.

The Landlord testified that the rental unit was returned to them damaged at the end of the tenancy and requesting to recover their costs for repairing the damage to the rental unit in the amount of \$2,941.26, consisting of \$2,514.75 for maintenance and service, \$197.90 for a new range hood, \$155.82 for a new garage door opener and \$72.79 for a new security keypad. The Landlord submitted six invoices and, into documentary evidence, referencing the previously submitted photographic evidence to support this portion of their claim.

### Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that this tenancy ended when a bailiff enforced a writ of possession on October 9, 2020, removing the Tenant and their possessions from the rental unit.

I also accept the undisputed testimony of the Landlord that the Tenant did not pay the rent for September and October 2020 as required by their tenancy agreement. Section 26 of the *Act* states the following:

#### ***Rules about payment and non-payment of rent***

**26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the Tenant breach of section 26 of the *Act* when they did not pay the rent as required under their tenancy agreement. The Landlord has requested to recover the unpaid rent in the amount of \$4,000.00, consisting of \$3,100.00 for September 2020 and \$900.00 for October 2020, at a \$100.00 per diem rate for the first nine days of October 2020. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant’s breach of section 26 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant’s breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the outstanding rent for the months of September and October 2020. I award the Landlord the recovery of the \$4,000.00 in outstanding rent for this period.

The Landlord has requested compensation to recover their costs to have the rental unit cleaned at the end of the tenancy in the amount of \$1,134.91, consisting of \$392.49 for carpet cleaning, \$280.00 in junk removal and \$462.43 for cleaners. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

***Leaving the rental unit at the end of a tenancy***

**37 (2)** *When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I have reviewed the photographs submitted into evidence by the Landlord taken on October 10, 2020 and find that the rental unit was returned to the Landlord in an uncleaned state.

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned at the end of this tenancy. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of cleaning costs. I award the Landlord the recovery of their cleaning costs in the amount of \$1,134.91.

The Landlord has also requested compensation to recover their costs to hire a bailiff to enforce a writ of possession, in the amount of \$2,400.00. I accept the undisputed testimony of the Landlord supported by their documentary evidence that this tenancy ended due to a breach of the *Act* by the Tenant, that this breach resulted in an order of Possession being issued by the Residential Tenancy Branch. I also accept the Landlord's testimony the Order of Possession had been served on the Tenant, and that the Tenant did not move out in accordance with that Order, resulting in the requirement of this Landlord to hire a bailiff to remove the Tenant from the rental unit.

I have reviewed the documentary evidence provided by the Landlord, and I find that the Landlord has provided sufficient evidence to show that the Landlord suffered a loss due to the Tenant's refusal to comply with the Order of Possession. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of their bailiff cost. I award the Landlord the recovery of their bailiff costs in the amount of 2,400.00.

As for the Landlord's claims for compensation for damage to the rental unit in the amount of \$2,941.26, consisting of \$2,514.75 for maintenance and service, \$197.90 for

a new range hood, \$155.82 for a new garage door opener and \$72.79 for a new security keypad, an Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit.

In this case, I accept the testimony of the Landlord that they did not conduct the move-in inspection for this tenancy. Section 23 outlines the requirement of a Landlord to conduct the inspection.

***Consequences for tenant and landlord if report requirements not met***

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

*(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*

*(b) a previous inspection was not completed under subsection (1).*

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (3), and*

*(b) the tenant does not participate on either occasion.*

I find that the Landlord breached section 23 of the Act when they did not complete the required move-in inspection of the rental unit for this tenancy.

In the absence of a move-in inspection report, I must look to the Landlord’s documentary evidence for proof of the condition of the rental property at the start of the tenancy. I have reviewed the pictures submitted into evidence that the Landlord claims

were taken of the rental unit on the day before this tenancy began, and I noted that none of the pictures include a date stamp on the photograph, nor do these pictures depicted all the of areas of the rental unit included in the Landlord's claim. As these pictures do not include a date stamp or cover the entire rental property, I find that I am unable to confirm when these photographs were taken or see all of the areas of this rental unit included in the Landlord's claim before me in these proceedings. Overall, I find the Landlord's documentary evidence to be insufficient to prove the condition of this rental unit on May 1, 2018, the start date of this tenancy.

In the absence of a valid move-in inspection or sufficient evidence to prove, to my satisfaction, the condition of this property at the start of this tenancy, I find that I am unable to determine if the damage claimed for by the Landlord in these proceedings was caused by this Tenant during this tenancy or to assess what is damage vis normal wear and tear. Consequently, I must dismiss the Landlord's claims for damages in their entirety.

Finally, the Landlord has also claimed for the recovery of their fees paid to the Law Courts of British Columbia to obtain a writ of possession; Section 72 of the Act states the following:

***Director's orders: fees and monetary orders***

*72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.*

*(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

*(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*

*(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

With the exception of compensation for filing an Application for Dispute Resolution with the Residential Tenancy Branch, the *Act* does not permit a party to claim for compensation for their costs associated with another court in relation to enforcement of an order issued by this office. Therefore, I must dismiss the Landlord's claim to recover their Law Courts of British Columbia fees. The Landlord's recourse for this amount would be through the Law Courts.

However, section 72 of the Act does give me the authority to order the repayment of a fee for an application for dispute resolution with the Residential Tenancy Branch. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$7,634.91, consisting of \$4,000.00 in outstanding rent, \$1,134.91 in cleaning costs, \$2,400.00 in bailiff fees, and \$100.00 to recover the filing fee for this hearing.

### Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$7,634.91**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: May 19, 2021

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Residential Tenancy Branch