



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, MNRL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing ("the landlord") and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenants ("the tenant") did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 45 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution by separate registered mail

sent on January 18, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on January 23, 2021. The landlord testified she hired an investigative service to locate the residence of the tenant and she sent the documents to that address.

The landlord provided the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90, I find the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution on January 23, 2021.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord stated that the month-to-month tenancy commenced on April 1, 2017. The landlord stated that rent in the amount of \$1,631.34 was due on the first day of each month and that a security deposit in the amount of \$775.50 was paid, which is still held in trust by the landlord. The landlord submitted a copy of the agreement.

The landlord stated that the tenant suddenly vacated the unit on September 30, 2020 without notice and without providing a forwarding address. She testified that the sum of \$9,002.06 remains owing for outstanding rent and provided a month-to-month breakdown in the Monetary Work Order.

The landlord stated that a condition inspection report was conducted on moving in and signed by both parties; a copy was submitted in evidence. The landlord sent emails to each tenant at the email address routinely used by the parties to arrange for a moving out inspection and to get their forwarding address; neither tenant responded. The landlord conducted an inspection alone after the tenant vacated as the landlord did not know where the tenant had moved or what their forwarding address was. The inspection

report as signed by the landlord alone was submitted as evidence.

The landlord testified that damage to the unit was observed after the tenant moved out and the unit needed cleaning and repairs, observations which are reflected in the report and in 25 submitted photographs. Garbage and debris were hauled away, and tipping fees incurred for which the landlord seeks compensation.

During the hearing, the landlord clarified the expenses claimed as follows:

ITEM	AMOUNT
Rent outstanding	\$9,002.06
Repairs – time and materials	\$2,270.00
Cleaning	\$545.00
Removal debris, trucking, and tipping fees	\$350.00
Light fixtures	\$49.57
Plumbing and bathroom (two receipts)	\$263.29
Investigator's fees	\$204.75
Application fee	\$100.00
TOTAL CLAIM – DAMAGES and COMPENSATION	\$12,784.67

The landlord submitted a Monetary Order Worksheet listing each item for which she claimed compensation.

The landlord testified that she incurred obtained two estimates for repairs for the unit, copies of which were submitted. The landlord did not have the financial resources to hire a repair company; accordingly, she did the work herself and submitted a request for compensation for these repairs of \$2,270.00 which is in keeping with the estimates.

The landlord obtained an estimate for cleaning, a copy of which was submitted. As she did not have the money to hire a cleaning company, the landlord cleaned the unit herself and claimed reimbursement of \$545.00, the amount of the estimate.

The landlord hired an investigator to locate the tenant and the investigator informed the landlord of their new address on January 16, 2021. A copy of the investigator's account

for \$204.75 was submitted and the landlord requested compensation.

The landlord submitted receipts for the remainder of the expenses claimed.

The landlord applied for Dispute Resolution on January 14, 2021.

The landlord requested authorization to apply the security deposit to the monetary award as follows:

Monetary Award (above)	\$12,784.67
(Less security deposit)	(\$775.00)
TOTAL MONETARY ORDER REQUESTED	\$12,009.67

The landlord requested a Monetary Order of **\$12,009.67**.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate,

their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided believable testimony supported in all material aspects by well-organized and comprehensive documents,

I have considered all the evidence submitted by the landlord, including the receipts and estimates, the photographs showing the unit needed cleaning and repairs, and the condition inspection report on moving in (signed by tenant) and moving out (not signed by tenant). I find the landlord's evidence credible and reliable in all aspects. The landlord's testimony was supported in all aspects by comprehensive documentary evidence.

I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the landlord's claim including that the amount claimed in outstanding rent is owing.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that appliance needed a new surface, the unit needed repairs and cleaning when the tenant vacated, and the tenant left garbage which had to be removed (all of which are referred to as "the damage"). I find the tenant is responsible for the damage, the landlord incurred the amount claimed in repairs as claimed, the amounts are reasonable and supported by the evidence, and the landlord took all reasonable steps to mitigate expenses. I find the damage is more than 'reasonable wear and tear'. I find the landlord is entitled to a monetary award in the amounts requested for these aspects of the claim.

I accept the landlord's testimony that the tenant vacated the unit without notice and that she had to obtain an inspector's help to find them. I find the landlord had met the burden of proof with respect to the investigator's fees and I allow this claim.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant an award to the landlord in the amount of **\$12,784.67**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent outstanding	\$9,002.06
Repairs – time and materials	\$2,270.00
Cleaning	\$545.00
Removal debris, trucking, and tipping fees	\$350.00
Light fixtures	\$49.57
Plumbing and bathroom (two receipts)	\$263.29
Investigator's fees	\$204.75
Application fee	\$100.00
TOTAL CLAIM – DAMAGES and COMPENSATION	\$12,784.67

I authorize the landlord to apply the security deposit to the award and grant a Monetary Order of **\$13,836.47** as follows:

Monetary Award (above)	\$12,784.67
(Less security deposit)	(\$775.00)
TOTAL MONETARY ORDER	\$12,009.67

The landlord is entitled to a Monetary Order in the amount of **\$12,009.67**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$12,009.67**.

This Order must be served on the tenants. If the tenants fail to comply with this Order the landlord may be filed the order in the Courts of the Province of British Columbia to be 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 17, 2021

Residential Tenancy Branch

