



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL, MNDCL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following testimony. JW testified that the tenancy began on June 30, 2019 and ended on October 12, 2020. JW testified that the monthly rent of \$1900.00

was due on the first of each month. JW testified that the tenant provided a security deposit of \$950.00 which the landlord still holds. JW testified that on September 24, 2020 the tenant gave notice that he would be moving out by October 31, 2020. JW testified that the tenant did not pay the October rent. Written condition inspection reports were done at move in and move out, but the tenant did not participate at the move out inspection.

AM testified that on October 9, 2020 the downstairs tenant contacted her about having no electricity or water in her unit and the fire alarm going off in the subject unit. AM testified that she found that the tenant had turned off the breakers and water for the home and that the fire alarm was not affixed properly. AM testified that the tenant removed most of his belongings. AM testified that on October 12, 2020 she was at the property and noticed the subject unit door open and entered. AM testified that the unit had excessive damage that wasn't there on October 9, 2020 including damage to cabinets, tv alcove, floors, tub and holes in the drywall in the unit. JW testified that the tenant should pay the hydro bill from October 12, 2020 to the end of the month despite moving out along with the city utilities for that same period.

The landlord is applying for the following:

1.	Rent for October 2020	\$1900.00
2.	B.C. Hydro	128.02
3.	City of Nanaimo Utilities	273.03
4.	Repairs and Cleaning	5232.00
5.	Filing fee	100.00
6.	Ambers lost wages	90.00
7.	Emotional distress	500.00
8.	Time compensation preparing for hearing	150.00
9.		
10.		
	<b>Total</b>	<b>\$8373.05</b>

The tenant gave the following testimony. The tenant testified that he was going to pay the October rent, but his child became ill and was dealing with many things at the time. The tenant testified that the landlord was very aggressive and threatened to kill him. The tenant testified that he took these threats seriously and wanted to limit communication. The tenant testified that he is responsible for some damage, but the landlord is asking an "astronomical" amount for the items as claimed.

The tenant testified that the landlord was harassing him about moving out and that all of this was fabricated to get him out of the suite. The tenant testified that much of the claim is fabricated and that this is an example of the very hostile relationship he had with the landlord. The tenant testified that he doesn't know who AM is and that he was never told that she was the property manager. The tenant testified that the landlord sent her uncle to threaten him when being served notice of this hearing.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

### Unpaid Rent October 2020

The tenant testified that he was served a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant testified that he misunderstood the notice and thought that he had the option of paying the rent within ten days or to move out. The tenant acknowledged that he was in error. The tenant confirmed that he did not pay the rent for October 2020, accordingly; I grant the landlord \$1900.00.

### B.C. Hydro

The tenant testified that the hydro was in his name during the tenancy and that he paid it up to the point that he left the unit. The landlord submits that the tenant should pay the hydro costs for October 13, 2020 - October 31, 2020 as the tenant was supposed to move out on October 31, 2020. The tenant paid up in full to the point the landlord took back possession of the unit, accordingly; the landlord is not entitled to any further compensation for this claim and I dismiss it without leave to reapply.

City of Nanaimo Utilities

The tenant agrees that he is responsible for this claim but only up until October 12, 2020. The landlord submits that the tenant should pay the full bill that covers from June 20, 2020 to October 29, 2021. The tenant is responsible to pay for the time he had possession of the unit. The pro-rated amount of \$2.07 per day X 115 days = \$238.05. The landlord is entitled to \$238.05 for this claim.

Repairs and Cleaning

AM did a walk through of the unit on October 5, 2020 and took pictures so that the owner could post advertisements online to attempt to re-rent the unit. AM testified that she did not observe any issues with the unit at that time. AM testified that on October 9, 2020 the downstairs tenant called to advise she had no power or water, and that the fire alarm in the subject unit was continually beeping. AM testified that the unit was empty and that there weren't any damages at that time. JW testified that she contacted the tenant on October 10, 2020 and he advised her that he had cleaners coming to clean the unit and would let her know when it was clean and when she could pick up the keys from him. JW testified that was the last she heard from the tenant.

AM testified that on October 12, 2020 she attended at the property and noticed the suite door ajar. AM testified when she entered the unit, she found that there was deliberate damage to the drywall, cabinets, tv alcove, and that grey paint had been thrown throughout the unit. AM testified that the unit was also "egged". JW testified that despite numerous attempts to contact the tenant, her messages were ignored. JW testified that the tenant did not attend the move out inspection or offer any explanation as to why he vacated without notice. AM testified that the repairs to fix the damage cost \$5232.00. Although the tenant was given a full opportunity to refute the damages claim, he spent the majority of his testimony explaining that it was a toxic relationship with the landlord and that she had threatened to kill him; a claim which the landlord adamantly denied. The tenant testified that he was unable to attend the move out inspection as he was fearful of the threats and just wanted to get away from these people.

After reviewing all of the documentation and considering the testimony of the parties, I am satisfied that the landlord has provided sufficient evidence, on a balance of probabilities, to support this claim and to show that the tenant was responsible for the

unit and that the damage had occurred while under his possession, accordingly; I find that the landlord is entitled to \$5232.00 for the repairs and cleaning of the unit.

Lost Wages, Distress & Prep Time

The time involved to prepare for a hearing and the anxiety of that preparation is part of litigating ones claim. The only hearing related costs recoverable under the *Act* is the filing fee pursuant to section 72, accordingly; I dismiss this portion of the applicants claim without leave to reapply.

Filing Fee

As the landlord has been successful in parts of their application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$7470.05. I order that the landlord retain the deposit of \$950.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$6520.05. This order may be filed in the Small Claims 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 18, 2021

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Residential Tenancy Branch