



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlord attended the hearing; however, the tenant did not attend.

The landlord testified that they served the tenant with their application, evidence, and Notice of Hearing (application package) on January 21, 2021, by handing her the documents.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Background and Evidence

The landlord said this tenancy started on February 4, 2013 and ended on February 28, 2020. The tenant paid a security deposit, which has been used by the tenant towards a month's rent.

During the tenancy the monthly rent was increased from \$1,400 to \$1,470 beginning March 1, 2015, and again on August 1, 2017, the monthly rent increased from \$1,470 to \$1,870. Although the increase was over the allowed amount, the tenant signed a written agreement allowing for that increase. Filed in evidence were the two notices of the rent increase and the written authority signed by the tenant.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. December 2019 unpaid rent	\$1,370
2. January 2020 unpaid rent	\$1,870
3. February 2020 unpaid rent	\$1,870
4. Dump fees	\$200
5. Filing fee	\$100
6. <i>Less security deposit</i>	<i>-\$1,400</i>
<b>TOTAL</b>	<b>\$4,010</b>

The landlord submitted that they have worked with the tenant since the end of the tenancy to arrange for repayment of the unpaid monthly rent, but without success.

The landlord said that the tenant used the security deposit to help pay a monthly rent payment, which is why this amount had been deducted from the total amount of unpaid monthly rent.

The landlord said the tenant agreed that they would pay \$200 for the costs incurred by the landlord in removing the tenant's personal property. Filed in evidence were text messages between the parties and copies of photographs of the personal property left at the end of the tenancy.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Despite being duly served with the landlord's application, the tenant failed to attend the hearing. The landlord's evidence is therefore uncontested.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. A legal right may include authorization from an Arbitrator giving permission to keep all or part of the rent or costs incurred to make an "emergency repair", as defined by the Act.

I find that the landlords submitted sufficient evidence to show that the tenant owed, but did not pay rent of \$1,370 for December 2019, \$1,870 for January and \$1,870 February, 2020, under the terms of the written tenancy agreement and the rent increases during the tenancy.

I also find the landlord submitted sufficient evidence to show that the tenant agreed to \$200 for dump runs and considering the photographs submitted by the landlord, I find this amount to be reasonable.

I therefore find the landlord has established a monetary claim of \$5,110 for a total rent deficiency and \$200 for dump runs.

The landlord is also entitled to recovery of the \$100 filing fee.

The security deposit of this tenancy will be off-set from the award made herein.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,010 under the following terms:

ITEM	AMOUNT
1. December 2019 unpaid rent	\$1,370
2. January 2020 unpaid rent	\$1,870
3. February 2020 unpaid rent	\$1,870
4. Dump runs	\$200
5. Filing fee	\$100.00
6. <i>Less security deposit</i>	<i>-\$1,400</i>
<b>TOTAL MONETARY ORDER</b>	<b>\$4,010</b>

Should the tenant fail to pay the landlord this amount without delay, the order must be served to the tenant for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

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 21, 2021

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Residential Tenancy Branch