



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-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 agent KE attended for the landlord ("the landlord"). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*. The parties had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Preliminary Issue: Service

The tenant denied receipt of the landlord's materials. The tenant testified that he learned of the hearing date from the RTB which sent him an automatically generated email prior to the hearing; the tenant called the RTB and was informed of the time/date for the hearing.

As the sufficiency of the landlord's service was in dispute, the landlord provided affirmed testimony setting out how service had taken place.

The landlord submitted this application on February 1, 2021.

The landlord testified they obtained an Order of Possession following an expedited hearing by Decision dated February 9, 2021, reference to the file number appearing on the first page. When the landlord attempted to serve the Order, the landlord discovered the tenant had vacated without notice or leaving an address.

The landlord testified that on February 23, 2021, they obtained an Order of Substituted Service authorizing service of the Application for Dispute Resolution with supporting documents and written evidence on the tenant by email at the email address routinely used by the parties during the tenancy in communication about tenancy matters. The landlord did not have a physical address for the tenant.

The landlord submitted a copy of the Order as evidence which stated in part as follows:

The landlord is granted an order for substituted service. The landlord may serve the tenant the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

I order that documents served in this manner have been sufficiently served to the tenant for the purposes of the *Act*, three days after the date that the e-mail is sent by the landlord to the tenant.

The landlord testified that pursuant to the Order for Substituted Service, they served the tenant with the Application for Dispute Resolution with supporting documents, written evidence and a copy of the Order of Substituted Service, by email sent on March 4, 2021 to the tenant at the email address stated in the Order. Pursuant to the terms of the Order, the documents are deemed received by the tenant three days later, that is, on March 7, 2021.

The tenant testified that the email address to which the documents were sent is his email address and has been throughout the tenancy to this day. As mentioned above, the tenant acknowledged receiving an email from the RTB at this email address.

The tenant acknowledged that he had access to a computer and checked his email periodically since the Order for Substituted Service was granted. The tenant was unable to provide a plausible explanation for why he did not receive the documents from the landlord and claimed the landlord was not telling the truth.

The tenant confirmed that this Decision and any Order are to be sent to him at this same referenced email address.

In considering the credibility of the parties, I find the landlord's submissions to be professional, persuasive, and forthright. I accept the agent's testimony, supported by well-organized and complete documentary evidence, that the landlord obtained an Order for Substituted Service and sent the materials to the tenant as directed in the Order. I find the landlord provided believable evidence throughout.

I find the tenant's evidence on the issue of service, as well as on all other key issues, to be inconsistent and unlikely. The tenant acknowledged that the email address is the tenant's and that he had access to a computer. The tenant did not provide any reasonable explanation for a failure to receive email.

Throughout the hearing, the tenant denied all relevant facts alleged by the landlord. Considering the tenant's conduct and blanket denial of even the most obvious facts, I find the tenant's denial of service to be unlikely and unbelievable. I find the tenant is not a reliable witness. Where the parties' version of events differs, I prefer the landlord's version. I give little weight to the tenant's testimony.

Accordingly, I find the landlord has met the burden of proof that the tenant has been properly served with the Application for Dispute Resolution, supporting documents and

written evidence. I find the tenant was served on March 7, 2021.

I now turn to the tenant's request for an adjournment.

Preliminary Issue: Application for Adjournment

At the outset of the hearing, the tenant claimed he required an adjournment. The tenant testified that he did not receive the documents from the landlord.

The landlord objected to the adjournment and requested the hearing proceed.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allows parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I considered the above tests after the parties each made submissions. I found that an adjournment was unlikely to result in a resolution. I found that the landlord had served the tenant on March 7, 2021.

The tenant acknowledged that he did not contact the landlord after learning of the hearing from the automatically generated email from the RTB. I found that the tenant had intentionally neglected to warn the landlord until the hearing started of his claims of failure to receive the material.

I found that the tenant had not submitted any supporting evidence confirming his inability to receive the email and consequent inability to proceed with the hearing.

The tenant did not say what he would do differently, such as assembling evidence, between today and any adjourned date.

I found that the tenant failed to establish that the adjournment was necessary to provide him with a fair opportunity to prepare.

I found there was possible prejudice to the landlord in the delay including the time for preparing for and attending another hearing. abuse requiring police attendance.

Considering all the evidence and the above tests, I accordingly denied the application for an adjournment and the hearing continued.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The lengthy hearing included divergent narratives. The landlord submitted considerable evidence including pictures and videos. Only selected, relevant and important aspects of the claims, the facts and my findings are set out below.

The landlord provided a background to the tenancy and submitted a copy of the tenancy agreement. The tenant lived in the basement unit of a multi-unit house. This fixed term tenancy began on October 20, 2020 with the term ending on November 30, 2021. The rental amount was \$1,350.00 monthly. At the beginning of the tenancy, the tenant provided a security deposit of \$65.00 which the landlord holds without authorization from the tenant.

At the beginning of the tenancy, the parties conducted a condition inspection which indicated that the unit was in good condition in all material aspects. A copy of the report signed by both parties was submitted. As the tenant moved out without notice and without leaving an address, the landlord conducted a condition inspection alone, a copy of the report being submitted.

The landlord testified as follows. The tenant physically assaulted the landlord's agent CG on December 15, 2020. The tenant "shoved him [CG] out and slammed the door on his arm", hurting CG. The landlord immediately called the police, the police attended and took statements from a witnessing contractor and the landlord. The landlord stated that they have been informed the police have issued an arrest warrant and are looking for the tenant.

The landlord submitted a monetary worksheet and clarified their claim as follows:

ITEM	AMOUNT
Compensation for loss of rent - two apartments	\$10,950.00
Painting	\$1,148.00
Cleaning – laundry room (\$189.00) + unit (\$157.50)	\$346.50
Lock Change	\$199.50
Re-renting expenses	\$1,286.25
TOTAL CLAIM - DAMAGES	\$13,930.25

The landlord testified that many warnings were conveyed to the tenant beginning with the first complaint of smoking in October 2020. Four warnings were conveyed in November 2020 and many others were sent to the tenant afterward. The landlord submitted copies of the warnings and emails.

The landlord obtained an Order of Possession pursuant to a Decision dated February 9, 2021 for the unit pursuant to an expedited hearing for Early Termination of the tenancy. Reference to the file number appears on the first page.

The landlord stated that when they went to the unit to serve the Order, the tenant had

already moved out of the unit. The tenant did not leave a forwarding address.

A summary of the landlord's evidence with respect to each claim follows. The landlord's claims are supported by photographs and invoices.

Loss of Rent - \$10,950.00

The landlord testified to assaultive incidents involving other female tenants in two apartments in the building. The tenant disturbed and terrified four other female residents with aggressive behaviours including making sexually suggestive comments to them. The landlord submitted videos of three different instances as evidence, showing the tenant looking into the suite (Apartment # 1) of an 18-year-old female tenant who lived alone in the bachelor unit of the rental property. The tenant is first observed looking into through the glass door, later returning with a flashlight and then wiggling the doorknob trying to open the door; the videos are date stamped as January 13, 2021.

The landlord testified that the tenant's behaviour included angry, loud swearing and "blaring music" going on for hours. The tenant also exhibited escalating verbal and physical abuse and violence.

The landlord testified that the 18-year-old female gave notice to end her tenancy as she was scared and fearful of the tenant's behaviour, comments and sexually charged language towards her. The landlord reimbursed the tenant for rent for the month of December 2020 (\$1,100.00 monthly, Apartment # 1) and did not rent the unit again for 4 months explaining that the landlord believed any occupant was unsafe as long as the tenant was living in the adjacent unit. When the landlord did rent the apartment again, the rental rate was lower by \$100.00 monthly. The landlord requested compensation for the months of lost rent and \$100.00 monthly thereafter for the duration of the fixed term for a total claim of \$4,950.00.

The landlord testified that the tenant also threatened and terrified female tenants in another apartment (Apartment # 2) located in the building. They reported being terrified and scared with the tenant's behaviour and his profanities, yelling, and banging in his own unit. The landlord testified that the occupants of Apartment # 2 described the tenant as "exhibiting bizarre behaviour and being messed up". During the December 2020 holidays, one such occupant was so scared when she was alone in her unit during one of the tenant's episodes of loud yelling, screaming and banging on the walls, that

she locked herself in a room fearing for her safety and called the police. As a result of the totality of the tenant's actions, the landlord reimbursed half the rent in Apartment # 2 for three months (\$2,000.00 x 3) and requested compensation in the amount of \$6,000.00 from the tenant.

The compensation requested for lost rental for the two apartments is set out in the following table:

ITEM	AMOUNT
Apartment # 1 - Loss of rent	\$4,950.00
Apartment # 2 - Compensation for rent reduction of \$2,000.00 monthly for three months	\$6,000.00
Loss of Rent Requested by Landlord	\$10,950.00

The tenant denied all the landlord's testimony including improper behaviour towards other tenants. He acknowledged pushing the landlord's agent but asserted this was in self-defence. The tenant said that the other occupants of apartments in the building were noisy and bothersome. He also stated that the landlord failed to provide adequate appliances and the landlord ignored his complaints.

The tenant acknowledged that he did not attend the RTB hearing of his application for compensation from the landlord and that the claim was dismissed without leave to reapply on February 23, 2021.

The tenant denied the landlord is entitled to compensation for this claim.

Painting -\$1,148.00

The landlord testified that the tenant smoked in the unit and other occupants complained many times beginning in October 2020. As a result of the tenant's smoking, the unit had to be treated to remove the odor and required repainting. As a result, the landlord incurred an expense of \$1,148.00 and submitted an invoice in this amount.

The tenant denied smoking in the unit. The tenant denied the landlord is entitled to compensation for this claim.

Cleaning – laundry room (\$189.00) + unit (\$157.50) – total: \$346.50

The landlord stated that the tenant “trashed” the common laundry room resulting in the above cleaning expense. As well, the unit required cleaning after the tenant vacated.

The landlord submitted two invoices in support of the amount claimed.

The tenant denied the landlord is entitled to compensation for this claim.

Lock Change - \$199.50

The landlord stated that the tenant moved out “in the middle of the night” and did not leave his keys. The landlord incurred lock change expenses as claimed in support of which the landlord submitted two invoices.

The tenant denied the landlord is entitled to compensation for this claim.

Re-renting expenses - \$1,286.25

The landlord testified that because of the tenant’s leaving before the end of the fixed term, the landlord incurred costs associated with advertising, showing, and renting the unit to new tenants. The landlord submitted an invoice in support of this claim with a breakdown of the items claimed.

The tenant denied the landlord is entitled to compensation for this claim.

Analysis

I have considered all the submissions and refer only to key, admissible facts. Substantial evidence and conflicting testimony were submitted in a 97-minute hearing. Only relevant findings are referenced.

Credibility

It is up to the party making a claim to establish it on a balance of probabilities, that is, that the claim is more likely than not to be true.

During the lengthy hearing and in reviewing the substantial documentary evidence including texts/emails, I found the landlord to be credible, straightforward, and professional. I found that the landlord made repeated requests to the tenant regarding issues, including a request to stop smoking, to reduce noise, and to leave other occupants alone. The landlord's testimony was supported in all key aspects by submitted documents including correspondence to the tenant and invoices.

I find the tenant was uncooperative, belligerent and combative throughout the tenancy (for example, in failing to stop smoking, assaulting the landlord's agent, and harassing other tenants) and at the end of the tenancy (in a sudden moving out with a failure to provide a forwarding address).

The tenant denied most of the landlord's key submissions and claims. This blanket denial was made even in the face of compelling evidence to the contrary. I find the tenant's evidence as to the denial of most responsibility to be unlikely and unbelievable given the facts as I understand them after reviewing the testimony and documents.

As a result of my assessment of the parties' credibility, I prefer the landlord's evidence in all pertinent aspects. Considering all these factors, I give considerable weight to the landlord's evidence. Where the parties' evidence conflicts, I prefer the landlord's version of events as reliable and credible.

Claim for Compensation and Damages

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.

The above-noted criteria are based on sections 7 and 67 of the Act. 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. 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.

These sections state as following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67. Without limiting the general authority in section 62 (3) [. . .] 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.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn.

Loss of Rent - \$10,950.00

I accept the landlord's evidence that the landlord incurred a loss of rent with respect to two apartments in the building in the amounts claimed for the reasons described by them. I find that this loss stemmed directly from the tenant's actions in harassing the tenants in the two apartments. I find the landlord took all reasonable actions to deal promptly with the situation created by the tenant. I accept the landlord's evidence that these steps included repeated written warnings to the tenant, police reporting, and obtaining an Order of Possession after bringing an expedited emergency claim to the RTB. I accept that the landlord's actions were reasonable in leaving the first apartment vacant until the tenant moved out.

I do not accept the tenant's denial of the events. As stated, I prefer the landlord's version with respect to all aspects of the claims. I find the tenant's actions led to the vacancy of the first apartment and the landlord's resultant loss of rent as claimed. Similarly, I find his actions led to a reduction of the ability of the occupants of the second apartment to peacefully live in the building; I find the reimbursement of half the rent for the short period to be a reasonable action by the landlord made to retain the rental situation while compensating them for the disturbance caused by the tenant.

I find the landlord has met the burden of proof with respect to this aspect of the claim and I grant a monetary award in the amounts requested.

Painting - \$1,148.00

Cleaning – laundry room (\$189.00) + unit (\$157.50) – total: \$346.50

Lock Change - \$199.50

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

After hearing the parties' evidence, I find the landlord has met the burden of proof that the tenant smoked in the unit requiring special cleaning and repainting, the tenant caused damages and failed to clean the laundry room and unit, and he failed to return keys requiring the landlord to replace the locks. I find the unit was in good condition

when the tenant moved in and the tenant is responsible for the repairs, cleaning and lock replacement claimed by the landlord. I do not accept the tenant's denial of responsibility as plausible for the reasons stated.

Considering the evidence and the testimony, I find the landlord has met the burden of proof with respect to all these claims. Accordingly, I grant the landlord a monetary award with respect to each of these claims.

Re-renting expenses - \$1,286.25

The landlord provided credible and reliable testimony of considerable correspondence with potential applicants for the unit's rental as well as significant administrative effort. The tenant acknowledged moving out before the end of the fixed term.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental.

In this case, the landlord requested compensation for losses resulting from the costs of re-renting a unit after the tenant's breach.

I find that the landlord has met the burden of proof that the costs are reasonable as claimed under this heading. The landlord has submitted a convincing explanation of expenses which I find credible and reasonable. I find the landlord has met the burden of proof on a balance of probabilities that there was time and effort involved in the re-renting of the unit in the amount claimed.

For the above reasons, I find the landlord has met the burden of proof with respect to all aspects of the claim. I allow the landlord's claim.

Awards

In summary, I award the landlord the following:

ITEM	AMOUNT
Compensation for loss of rent - two apartments	\$10,950.00
Painting	\$1,148.00
Cleaning – laundry room (\$189.00) + unit (\$157.50)	\$346.50
Lock change	\$199.50
Re-renting administrative expenses	\$1,286.25
TOTAL AWARD	\$13,930.25

Filing fee and Deposit

As the landlord has been successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee. Further to the offsetting provisions of section 72, the landlord is entitled to apply the deposit to the award.

Monetary Order

I grant the landlord a Monetary Order of **\$13,355.25** as follows:

ITEM	AMOUNT
Award (above)	\$13,930.25
Filing Fee reimbursement	\$100.00
(Less security deposit)	(\$675.00)
TOTAL MONETARY ORDER	\$13,355.25

Conclusion

The landlord is entitled to a monetary order in the amount of **\$13,355.25**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file 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: June 04, 2021

Residential Tenancy Branch