



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:11 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlords CK (the landlord) and RK attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlords affirmed they understand it is prohibited to record this hearing.

On March 03, 2021 the landlords were granted an authorization to serve the tenant by email:

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.

I accept the landlord's testimony that the tenant was served with the application, the evidence and the substitute service decision (the materials) by email sent on March 17, 2021. The landlord submitted into evidence a print-out of the email sent. I find the tenant was served the materials in accordance with section 71(2)(c) of the Act and the interim decision dated March 03, 2021.

The interim decision provides that the materials served by email are deemed received three days after the email is sent. Thus, the tenant is deemed to have received the materials on March 20, 2021.

The landlord affirmed she served extra evidence on May 23, 2021. The tenant is deemed received the extra evidence on May 26, 2021.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I have excluded the landlords' evidence served on May 26, 2021, per Rule of Procedure 3.14.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the parties entered into a fixed term tenancy from September 14, 2020 to September 01, 2021. Monthly rent of \$2,000.00 was due on the first day of the

month. At the outset of the tenancy a security deposit of \$950.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence.

The tenant emailed the landlords on February 04, 2021:

I will be moving out my belongings by end of week and am asking that we mutually agree to end tenancy effective February 5, 2021 at 11:59pm. I will ensure the unit is clean. You have my security deposit and it will most likely need to go towards some pain touch ups as I did install a couple of shelves.

The tenant vacated the rental unit on February 06, 2021 and did not serve his forwarding address.

The landlord affirmed the tenant did not pay rent in February 2021. The landlords are claiming for February 2021 rent in the amount of \$2,000.00.

The landlord posted an advertisement to re-rent the unit on a website and in the rental building lobby on February 07, 2021. The landlord asked for the same rent amount. On February 20, 2021 the landlord posted an advertisement on two other websites. The landlord affirmed two potential tenants applied, but they had a credit score below 600 points. On April 10, 2021 the landlord hired a property manager to advertise the rental unit further and on April 19, 2021 the landlord reduced the price to \$1,895.00. On May 21, 2021 the landlord was able to re-rent the unit for a tenancy starting on June 15, 2021. A copy of the new tenancy agreement was submitted into evidence. It indicates monthly rent will be \$1,895.00.

The landlords are asking for loss of rental income from March 01 to June 14, 2021 in the amount of \$2,000.00 per month and \$105.00 per month from June 15 to September 01, 2021 because the new rent is lower. The landlords are claiming for loss of rental income in the total amount of \$7,199.38.

The landlord affirmed the tenant did not clean the 480 square feet studio rental unit. The floors and the bathroom were dirty, the cupboards needed to be wiped down. The landlord believes the tenant did not clean the rental unit during the entire tenancy. Landlord RK stated the rental unit was very dusty. The landlord cleaned the rental unit for 3.5 hours at the hourly rate of \$50.00. The landlords are asking for cleaning expenses compensation in the amount of \$175.00.

The landlord affirmed the tenant installed five shelves and damaged the walls. The tenant removed the shelves, ripped the drywall and is responsible for 31 holes in the rental unit. The landlord painted and repaired the rental unit's walls for 13.5 hours at the hourly rate of \$50.00. The landlords are asking for paint and walls repair labour compensation in the amount of \$675.00 and \$260.23 for the paint and brushes purchased to paint the rental unit. The landlord submitted into evidence three receipts for painting supplies and photographs taken on February 07, 2021. The landlord affirmed the rental unit was painted before the tenancy started.

The total amount the landlords are seeking is \$10,309.61.

### Analysis

Sections 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Unpaid rent

I accept the landlord's uncontested testimony and the tenancy agreement that the tenant must pay monthly rent of \$2,000.00 on the first day of the month and the tenant did not pay rent due on February 01, 2021.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's uncontested testimony and the tenancy agreement, I find the tenant is in arrears for February 2021 rent in the amount of \$ 2,000.00.

As such, I award the landlords \$2,000.00.

#### Loss of rental income

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term ending on September 01, 2021 and the tenant ended the tenancy early on February 06, 2021, contrary to section 45(2)(b) of the Act:

(2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,

**(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(emphasis added)

I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on September 01, 2021, the landlord incurred a loss of rental income from March 01 to September 01, 2021.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the

premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's uncontested testimony, I find the landlords acted to minimize their losses. However, per section 7(2) of the Act and Residential Tenancy Branch Policy Guidelines 3, 5 and 16 the landlords should have taken additional steps to minimize their loss of rental income, such as further lowering the rental amount asked. I further find the landlords are entitled to receive loss of rental income compensation from May 21 to June 14, 2021 because they advertised the rental unit on three websites and hired a property manager to advertise the rental unit further. It is not reasonable to expect that new tenants will move in immediately.

The landlords should have reduced the asking price in accordance with the following table:

<b>Period</b>	<b>Rent reduction (% over the full rent amount)</b>	<b>Rent after reduction</b>
From February 07 to 28, 2021	Full rent amount	\$2,000.00
From March 01 to 31, 2021	Reduction of 5%	\$1,900.00
From April 01 to 30, 2021	Reduction of an extra 5%	\$1,800.00
From May 01 to 31, 2021	Reduction of an extra 5%	\$1,700.00
From June 01 to 14, 2021	Reduction of an extra 5%	\$1,600.00

As such, I find the landlords suffered a loss of rental income in the amount of \$1,900.00 from March 01 to 31, \$1,800.00 from April 01 to 30, \$1,700.00 from May 01 to 31 and \$746.66 from June 01 to June 14 (\$53.33 per day x 14 days)

I also find the landlords incurred a loss of rental income from June 15 to September 01, 2021 in the amount of \$105.00 per month, as the unit was re-rented at \$1,895.00 instead of \$2,000.00 per month, totalling \$266.00 (\$3.5 per day x 76 days).

Thus, in accordance with section 7 of the Act, I order the tenant to pay the landlords the amount of \$6,412.66.

### Cleaning

Section 37(2) of the Act states:

- (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.

Residential Tenancy Branch Policy Guideline 1 states: “The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.”

Based on the landlords’ undisputed convincing testimony, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended and the landlords incurred a loss.

I award the landlord compensation in the amount of \$175.00 for 3.5 hours of cleaning at the hourly rate of \$50.00.

### Painting

Residential Tenancy Branch Policy Guideline 1 states:

#### **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the undisputed landlord's testimony, the tenant's email dated February 04, 2021 and the photographs submitted, I find, on a balance of probabilities, the tenant breached section 37(2)(a) of the Act by failing to paint the damaged walls and the landlords incurred a loss. I find that 31 holes in a 480 square feet studio rental unit are an excessive number.

Given the painting materials receipts, I award the landlords \$260.23 in compensation for painting materials.

Based on the landlord's convincing testimony, I find it reasonable to award \$675.00 in compensation for 13.5 hours of labour to paint the rental unit at the hourly rate of \$50.00.

As such, I award the landlords \$935.23 in compensation for painting expenses.

#### Filing fee and summary

As the landlords were successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$950.00 in partial satisfaction of the monetary award granted.

In summary:



Item	\$
Unpaid rent (February 2021)	2,000.00
Loss of rental income	6,412.66
Cleaning	175.00
Painting	935.23
Filing fee	100.00
Subtotal	9,622.66
Minus deposit	950.00
<b>Total</b>	<b>8,672.66</b>

### Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlords to retain the \$950.00 deposit and grant the landlords a monetary order in the amount of \$8,672.66.

The landlords are provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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: June 10, 2021

---

Residential Tenancy Branch