



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order for \$1,930.00 for unpaid rent, for damage to the unit, site or property, to retain the tenant's security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received the landlord's application and their documentary evidence and had the opportunity to review both. The landlord stated that the photos were not legible and were in black and white, although the photos submitted by the tenant were in colour. As the tenant failed to submit identical evidence to both the Residential Tenancy Branch (RTB) and the applicant, all photo evidence was excluded from this hearing pursuant to RTB Rule 3.7 which applies and states:

**3.7 Evidence must be organized, clear and legible All documents to be relied on as evidence must be clear and legible.**

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Although the tenant claims that colour photos were submitted for a previous hearing, the file number of which has been included on the style of cause for ease of reference, the tenant was advised that documentary evidence from a previous file does not transfer to another application for either party. The previous hearing will be referred to as Previous Decision for the remainder of this decision.

#### Preliminary and Procedural Matters

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. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

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

In addition, the Previous Decision has already dealt with the security deposit regarding this tenancy and as a result, will not be considered as part of this application further.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord also entitled to the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A six-month fixed-term tenancy began on September 1, 2020. Monthly rent was \$1,390.00 per month and was due on the first day of each month.

The landlord's monetary claim of \$1,930.00 contained an adding error, which I find is actually \$1,830.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid September 2020 rent	\$1,390.00
2. Strata Move in fee	\$100.00
3. Admin fee for the tenancy agreement paper preparation	\$120.00
4. Legal fee for consulting with lawyers	\$120.00
5. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,830.00</b>

Regarding item 1, the landlord is seeking unpaid rent for September 2020 rent. The tenancy agreement was signed and dated by both parties on August 25, 2020. The tenant did not pay rent for September 2020 and alleges that the landlord breached the Act by failing to provide a clean and safe rental unit.

The tenant referred to a document dated September 1, 2020 (Tenant's Letter), which the tenant later confirmed was provided to the landlord on September 2, 2020.

The Tenant's Letter reads in part:

I am serving you with notice to document the state and conditions of the rental unit mentioned above, and to document our conversation on September 1<sup>st</sup>, 2020. This Notice is served with references to

- BC Residential Tenancy Act.
  - Clause 10 of the agreement between us signed and dated on August 25<sup>th</sup>, 2020
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#### **Background facts**

I visited the unit above twice, the first time on August 24<sup>th</sup>, 2020 and the second time on September 1<sup>st</sup>, 2020. Both times, I had to ask a friend of mine to drive me to the unit. This friend also witnessed our conversations.

On August 24<sup>th</sup>, 2020, I went to view the rental unit mentioned above. At the time the unit was still occupied, and the previous tenants were in the process of moving out.

I agreed to sign a tenancy agreement in good faith and based on the fact that the unit will be ready and safe to move in by that date

I started making arrangements to transfer my utilities and internet service to the rental unit, so it is ready for moving in on September 1<sup>st</sup>.

On August 30<sup>th</sup>, I received a text message from you acknowledging that the unit needs cleaning and fixing before moving in. (see snippet below).

Between August 24<sup>th</sup> and September 1<sup>st</sup>, 2020, I had multiple communications with you, and you confirmed to me that you are in the process of cleaning and repairing the unit so it is ready for move in on September 1<sup>st</sup> as per the agreement. I even offered you the flexibility to take additional time to clean and repair the unit before I move in as I need it ready by the time I take possession of it, however you confirmed that it will be ready by September 1<sup>st</sup> (see snippet below).

On September 1<sup>st</sup>, 2020, I met you at the rental unit on the assumption that it is ready for moving in.

#### **Issues:**

Upon inspection of the unit on September 1<sup>st</sup>, 2020. It was clear that the unit is not ready for moving in. The unit was very dirty, there was multiple apparent damages that needed to be fixed before a new tenant can move, and most importantly it was not safe to move in.

Some of my observations on the condition of the units were

- The floors had not been cleaned or mopped at all. In fact, you asked me to keep my shoes on, and acknowledged that the floors had not been cleaned.

[Reproduced as written]

On the following page the Tenant Letter continues and states in part:

### **Notice of material breach of contract**

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- There were deposits of dirt in the corners and on the windows.
- The kitchen and bathroom walls were dirty with dirt and drips dripping all over them.
- There was dirt on the counter, there was crumbs on them and food stains.
- The refrigerator and the stove top were stained.
- The walls were damaged, there was multiple big holes on the walls. One of these holes is larger than 15cm of diameter.
- The lights were covered in dust and looks like they have not been cleaned in years.
- There were bird feces on the floor of the balcony from the previous tenants' bird.
- There were multiple buckets laying around the apartment, which again shows that the cleaning has not been completed properly.
- The fire alarm was dangling down and not secured to the ceiling. This in itself constitutes a safety hazard and non-compliance with the health and safety regulations.

I took multiple photos of the condition of the unit to document the observations above.

### **My efforts to solve these issues in good faith and aggressive behavior from you**

I tried to work with you on solving these issues as quickly and swiftly as possible. You seemed not willing to take the responsibility and hire a cleaner to prepare the place for moving in and you want me to do so instead. I was willing to cooperate and called a cleaning company that I found in a random google search to obtain a quote for the cost of cleaning a similar place. I put my phone on speaker so you can listen to the conversation yourself. The quote that was given was \$350, and the cleaning company made it clear that the actual cost may increase depending on the size and overall condition of the apartment.

Once you heard the quote, you got very aggressive with me, started raising your voice, and made multiple inappropriate comments. This behavior was extremely offensive and threatening to me and my friend.

Due to this aggressive behavior, we had to leave the apartment as I and my friend felt threatened by you.

As a result of the filthy, damaged and unsafe condition of the apartment, I did not take possession of this apartment as it was not in a livable state. If I can not walk on the floors or lean on the counters because how dirty they are, how do you expect me to move my belongings and live there?

You also mentioned to me that you did not refund the security deposit to the previous tenants given the state that they left the unit in, but it is clear to me that you did not use this damage deposit to clean or fix the unit as you are supposed to do.

Given that the move in date was supposed to be September 1<sup>st</sup> and given that you did not prepare the unit properly for a moving in as you are required to do. You are in breach of the contract signed and dated on August 25<sup>th</sup>, 2020.

[Reproduced as written]

The third page states in part that “As a result of your breach of the contract and given my efforts to resolve this issue with your in a friendly matter has failed as a result of your aggressive behaviour. I request that your return my deposit in full to me within 15 days of receiving this notice as per the *BC Residential Tenancy ACT* to the redirect address below...”

[Reproduced as written]

The tenant then referred to a letter from the landlord dated September 1, 2020 and specifically point 4c and 4d, which read in part:

4c- Pay September rent in full right away \$1, 390. Also I accepted to pay the move in fee for you (\$100) as gesture of good tenancy. I reserve the right to charge you should this trend of argument continues

4d- Provide 5 post dated cheques for the remaining of the tenancy term. I will no longer accept the risk of the exposure to unknowns that may come from your side.

[Reproduced as written]

The tenant stated that 4c was an attempt by the landlord to add a fee that was not agreed to at the time the tenancy was formed, which I will address further below.

The tenant also stated that 4d was adding more requirements to the tenancy, which the landlord was not permitted to do.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Firstly, regarding item 1, I find the tenant is attempting to rely on section 45(3) of the Act which states:

**Tenant's notice**

**45(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.**

[Emphasis added]

I find the tenant failed to give the landlord a reasonable period to address any complaints in the letter dated September 2, 2020 and that by doing so the tenant breached the Act by failing to comply with section 26 of the Act, which states:

**Rules about payment and non-payment of rent**

**26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act,** the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

Furthermore, section 16 of the Act applies and states:

**Start of rights and obligations under tenancy agreement**

**16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.**

[Emphasis added]



Therefore, based on the above, I find the landlord has met the burden of proof to support that the tenant owed \$1,390.00 in rent as of September 1, 2020, and I find the Tenant Letter failed to provide the landlord with reasonable time to address any deficiencies. Therefore, I find tenant breached section 26 of the Act and is liable for September 2020 rent and I grant the landlord **\$1,390.00** as claimed.

For items 2, 3 and 4, I find the tenant is not liable for any of the costs claimed. Firstly, item 2, the move-in fee, was not agreed to in the tenancy agreement with a specific amount. Secondly, there is no remedy for an admin fee related to creating a tenancy agreement under the Act. Thirdly, there is no remedy for legal fees under the Act and that item 3 was completely the discretion of the landlord for which the tenant has no liability. Given the above, items 2, 3 and 4 are dismissed due to insufficient evidence, without leave to reapply.

As item 1 as successful, the landlord is granted the filing fee of **\$100.00** pursuant to section 72 of the Act.

ITEM DESCRIPTION	AMOUNT GRANTED
1. Unpaid September 2020 rent	\$1,390.00
2. Strata Move in fee	Dismissed
3. Admin fee for the tenancy agreement paper preparation	Dismissed
4. Legal fee for consulting with lawyers	Dismissed
5. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,490.00</b>

Based on the above, I find the landlord has established a total monetary claim of **\$1,490.00** as listed in the table above.

**I CAUTION** the tenant not to breach section 26 of the Act in the future and to ensure they provide reasonable time for a landlord to address any complaints in the future.

The landlord is granted a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of **\$1,490.00**.

### Conclusion

The landlord's application is partially successful.



The landlord has established a total monetary claim in the amount of \$1,490.00. The landlord has been granted a monetary order pursuant to section 67 of the Act in the amount of \$1,490.00. If the landlord requires enforcement of the monetary order, the monetary order must first be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant is cautioned that they are responsible for all costs related to the enforcement of the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2021

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Residential Tenancy Branch