



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes    **MNDCL, MNRL-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 landlord's agent AR attended ("the landlord") and had opportunity to provide testimony and submit evidence. The hearing process was explained.

### *Attendance of Tenant*

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

### *Service by Landlord upon Tenant*

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by email pursuant to an Order for Substituted Service dated March 29, 2021. The landlord testified the required documents were sent on March 29, 2021

Further to the affirmed evidence of the landlord, I find the landlord served the tenant with the documents required in the Order including the Notice of Hearing and Application for Dispute Resolution on March 29, 2021 pursuant to sections 89 and 90.

### *Recording*

The landlord was 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. They were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, they 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. They had no questions about my direction pursuant to RTB Rule 6.11.

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

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and authorization to apply the security deposit to the award?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord provided uncontradicted evidence regarding the tenancy as the tenant did not attend the hearing. The landlord submitted a copy of the agreement and testified as to the following particulars of the tenancy:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	October 15, 2020
Date of ending	March 15, 2021
Monthly rent payable on 1 <sup>st</sup>	\$825.00
Security deposit	\$412.50
Pet deposit	None
Outstanding rent	\$825.00

The landlord clarified their monetary claim during the hearing which is summarized in the following table (excluding outstanding rent):

ITEM	AMOUNT
Repairs (Invoice submitted)	\$194.26
Strata fines	\$400.00
Reimbursement filing fee	\$100.00
<b>DAMAGE</b>	<b>\$694.26</b>

The landlord testified that a condition inspection was not conducted at the beginning of the tenancy.. The unit was in good condition in all relevant aspects as it was new construction. The tenant moved out without notice and without providing a forwarding address.

The landlord testified that the tenant left damage requiring repairs which cost \$194.26. The landlord repaired the damages, submitted an invoice, and requested compensation.

The landlord testified that the tenant incurred strata fines totalling \$400.00. Documentary evidence of the fines was submitted. The landlord requested reimbursement.

The landlord submitted a comprehensive evidence package supporting all aspects of the claim.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$825.00
Repairs	\$194.26
Strata fines	\$400.00
Reimbursement filing fee	\$100.00
<b>TOTAL CLAIM</b>	<b>\$1,519.26</b>

The landlord requested authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total Claim (above table)	<b>\$1,519.26</b>
(Less security deposit)	(\$412.50)
<b>MONETARY ORDER REQUESTED</b>	<b>\$1,106.76</b>

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#### Analysis

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*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.*

Each of the above four tests are considered in my findings.

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I give substantial weight to the landlord's evidence which was complete and well-prepared. The landlord's testimony was credible and straight forward.

Based on the uncontradicted credible evidence of the landlord, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims. I find the tenant failed to pay rent and reimburse the landlord for expenses for which the tenant was responsible contrary to the tenancy agreement and the Act.

I accept the landlord's evidence and I find the tenant damaged the unit and did not meet the tenant's obligation to repair under section 32 of the Act, as follows:

*32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

I accept the landlord's evidence and find the tenant incurred fines of \$400.00 for which the landlord is entitled to compensation.

I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord fairly seeks compensation. I accept the landlord's evidence that they made reasonable efforts to mitigate losses and reduce expenses and they incurred the costs for which they seek reimbursement.

I find the landlord has met the burden of proof with respect to the amount of the outstanding rent and expenses claimed.

As the landlord has been successful in the landlord's claim, I grant an award of \$100.00 for reimbursement of the filing fee.

Therefore, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of **\$1,519.26** for unpaid rent, compensation for the damages and loss, and reimbursement of the filing fee as set out in the following table:

ITEM	AMOUNT
Outstanding rent	\$825.00
Repairs	\$194.26
Strata fines	\$400.00
Reimbursement filing fee	\$100.00
<b>TOTAL AWARD</b>	<b>\$1,519.26</b>

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Further to the offsetting provisions under section 72, the landlord is entitled to apply the security deposit to the monetary award. The landlord is awarded a Monetary Order in the amount of **\$2,548.50** as set out in the following table:

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ITEM	AMOUNT
Total Claim (above table)	<b>\$1,519.26</b>
(Less security deposit)	(\$412.50)
<b>MONETARY ORDER</b>	<b>\$1,106.76</b>

Conclusion

I grant a Monetary Order to the landlord in the amount of **\$1,106.76**.

This Monetary 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: July 13, 2021

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Residential Tenancy Branch