



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0944524 BC LTD. and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

On March 11, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

H.A. and M.A. attended the hearing as agents for the Landlord; however, the Tenant did not attend the hearing at any point during the 40-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

M.A. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on March 19, 2021 (the registered mail tracking number is noted on the first page of this Decision). He did not check the tracking history to determine what happened to this package; however, a receipt for the registered mail was submitted as proof of service. Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

M.A. advised that the tenancy started on September 1, 2020 and it ended when the Tenant gave up vacant possession of the rental unit on or around February 28, 2021. Rent was established at an amount of \$1,000.00 per month and was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

H.A. confirmed that neither a move-in inspection nor a move-out inspection was conducted with the Tenant. While neither of them was sure when the Tenant provided her forwarding address in writing, they confirmed that the Tenant mailed a form with her forwarding address sometime after she gave up vacant possession of the rental unit.

M.A. advised that the Landlord is seeking compensation in the amount of **\$1,000.00** because the Tenant was in a month-to-month tenancy and gave notice by text on February 27, 2021 to end her tenancy on February 28, 2021. He stated that the Landlord was not able to rent the unit in March 2021 on such short notice. As such, the Landlord is seeking compensation for the loss of March 2021 rent.

He also advised that the Landlord is seeking compensation in the amount of **\$1,000.00** for the various other costs; however, these were not specifically outlined on the Application and a Monetary Order Worksheet was not submitted to detail what costs were being sought. In the Application, the Landlord noted that “She moved most of her belongings except she left all of her unwanted items in the yard and suite. These included lots of garbage and large toys etc. for her child.” As such, I can reasonably infer that the Tenant was aware of some claims that the Landlord was seeking remedy for. Consequently, I was prepared to hear the Landlord’s submissions on these issues.

M.A. advised that the Tenant left lots of property and refuse behind. He referenced the pictures submitted as documentary evidence. H.A. advised that in total, he took one full load of refuse to the dump; however, he did not have receipts for this, nor did he have any other documentary evidence to support this claim. The Landlord is seeking compensation in the amount of **\$100.00** for the cost of this disposal fee.

M.A. advised that the Tenant stole a framed mirror from the rental unit, and he cited a picture submitted as documentary evidence. This mirror was approximately four years old and was not replaced for the new tenant. He stated that the value to replace this would be approximately **\$20.00** to **\$50.00**, but there was no documentary evidence to support this amount.

M.A. advised that the Tenant stole approximately 10 knobs from the cabinets of the rental unit, and he cited pictures submitted as documentary evidence to support this allegation. He stated that these knobs cost approximately \$10.00 per knob originally, but the Landlord replaced them with knobs valued at \$1.00 each. There was no documentary evidence submitted to corroborate the value of the old knobs or the cost of the new knobs.

H.A. advised that the Tenant did not clean the rental unit at all, so he spent approximately 20 hours of his own time cleaning. There were some pictures submitted as documentary evidence that marginally depicted the state of the rental unit. He charged \$25.00 per hour for his time to clean the rental unit.

Finally, M.A. advised that the Tenant left behind some furniture that required moving so he spent one-hour, with two friends, moving this furniture. There was no documentary evidence submitted to support any of these claims. He stated that this service was valued at \$25.00 per hour per person.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that neither a move-in inspection nor a move-out inspection was conducted by the parties. As such, I am satisfied that the Landlord failed to comply with the *Act* and *Regulations* in completing these reports. Therefore, I find that the Landlord has extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenant’s deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant’s forwarding address in writing sometime after February 28, 2021. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on March 11, 2021. While the Landlord made this Application within 15 days of receiving the Tenant’s forwarding address in writing, as the Landlord extinguished the right to claim against the deposit, the Landlord should have returned this deposit in full. The Landlord could have then still made an Application against the Tenant for compensation for the monetary issues. Regardless, as the Landlord extinguished the

right to claim against the deposit, but did so anyways, I am satisfied that the Landlord did not comply with the *Act*. Therefore, I find that the doubling provisions do apply to the security deposit in this instance, and I grant the Tenant a Monetary Order in the amount of **\$1,000.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent in the amount of \$1,000.00, there is no dispute that the tenancy was a month-to-month tenancy when the Tenant gave her text notice to end the tenancy on February 27, 2021 that was effective for February 28, 2021.

Sections 44 and 45 of the *Act* set out how tenancies end in this instance. The Tenant is required to provide the Landlord with one, whole month's written notice to end a month-to-month tenancy. Given that the undisputed evidence is that the Tenant did not do so, and that the Landlord was unable to rent the unit for March 2021, I am satisfied that the Landlord is entitled to a monetary award in the amount of **\$1,000.00** to satisfy the loss for rent owing for the month of March 2021.

With respect to the Landlord's claims for compensation in the amount of \$1,000.00 on the Application, it is clear that there is no indication of how this specific amount came about. Furthermore, there is scant documentary evidence that was submitted to support relief in this particular amount, and it was evident that the agents for the Landlord had little knowledge or information on what exactly was being sought. This amount was seemingly chosen at random, and this causes me to doubt the legitimacy of these claims. Regardless, their solemnly affirmed testimony on these issues will be considered.

Regarding the Landlord's claim in the amount of \$100.00 for the cost of refuse disposal, based on the documentary evidence provided, I am satisfied that the Tenant left behind property and refuse that required being disposed of. While there is no documentary evidence to support the cost of the dump fees, I find it reasonable that one load to the

dump would cost **\$100.00**. As such, I grant the Landlord a monetary award in this amount to satisfy this debt.

With respect to the Landlord's claim in the amount of \$20.00 to \$50.00 for the replacement of the mirror, the undisputed evidence is that the Tenant stole this prior to leaving the rental unit. While it was unclear why the Landlord did not replace this for the new Tenant, and as there is no documentary evidence to support the value of the old mirror or the cost to replace this, I find it reasonable to grant the Landlord a monetary award in the amount of **\$35.00** to replace the missing mirror.

Regarding the Landlord's claim for the replacement of stolen cabinet knobs, the undisputed evidence is that the Tenant stole these prior to leaving the rental unit. There was no documentary evidence submitted to support the value of the old knobs or the cost to replace them with new ones. However, based on the solemnly affirmed testimony only, I find it reasonable to grant the Landlord a monetary award in the amount of **\$10.00** to satisfy this debt.

With respect to the Landlord's claims for cleaning the rental unit, I note that there are some pictures submitted as documentary evidence; however, these do not fully depict the alleged condition of the rental unit at the end of tenancy. Although, from the pictures, I can reasonably infer that the rental unit was not suitably cleaned at the end of the tenancy. Given that there is no documentary evidence to support the extent of the Landlord's claims for cleaning, I find it reasonable to grant the Landlord a monetary award in the amount of **\$250.00** to compensate the Landlord for cleaning.

Finally, regarding the Landlord's claims for the cost of moving furniture that the Tenant left behind, given the undisputed pictures of other items the Tenant left behind, it would not surprise me that she left furniture as well for the Landlord to deal with. While there is no documentary evidence to support this, based solely on the solemnly affirmed testimony of M.A., I am satisfied that two other people were hired for an hour, at a cost of \$25.00 per person, to move this furniture. As such, I grant the Landlord a monetary award in the amount of **\$75.00** to satisfy this debt.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of total Monetary Award Payable by the Tenant to the Landlord**

Rental arrears for March 2021	\$1,000.00
Refuse disposal	\$100.00
Stolen mirror	\$35.00
Stolen cabinet knobs	\$10.00
Cleaning	\$250.00
Moving furniture	\$75.00
Filing fee	\$100.00
Double security deposit	-\$1,000.00
<b>TOTAL MONETARY AWARD</b>	<b>\$570.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$570.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. 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: August 5, 2021

---

Residential Tenancy Branch