



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 award for damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenant left the unit extremely dirty with excessive garbage left behind. The landlord testified that there were multiple small repairs required in the unit such as filling wall holes, painting, stove burners replaced, fridge seal replaced amongst other miscellaneous repairs. The landlord testified that the tenant didn't pay the rent for March 2021 or utilities due up until that point. The landlord testified that the tenant was late for 11 out of 13 months and requests the late fees for the applicable months outside the state of emergency due to COVID – 19. The landlord testified that it took 24 hours to clean the unit; for which the landlord did the work herself and submits that \$40.00 per hour is reasonable for her time.

The landlord is applying for the following:

1.	Unpaid March Rent	\$1575.00
2.	Damages	1620.00
3.	Cleaning and Garbage Disposal	1410.00
4.	Utilities	269.72
5.	Late fees	275.00
6.	Liquidated Damages	250.00
7.	Loss of Revenue for April 2021	1575.00
8.	Filing Fee	100.00
9.	Less Deposit	-787.50
	<b>Total</b>	<b>\$6287.22</b>

The tenant gave the following testimony. The tenant testified that he agrees with a large part of the landlords claim with some exceptions. The tenant testified that he feels the cost of cleaning is too high. The tenant testified that the fridge was extremely old, and the fridge seal simply became worn due to age. The tenant testified that he had no intention of evading service or his responsibility in this matter.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below. It is worth noting that the landlord was disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion.

Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

#### **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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Along with the above, I have also turned my mind to Residential Tenancy Policy Guideline 40 to determine the “useful life” of building elements.

I address the landlords claim and my findings as follows.

Unpaid March Rent - \$1575.00

The tenant agreed that he was responsible for this claim, accordingly; I find that the landlord is entitled to \$1575.00.

Damages \$1620.00

The landlord was particularly vague in presenting this portion of their claim. The landlord often referred to items that required cleaning in this section even though she had a separate section of her claim for cleaning. In addition, the landlord testified that she or her husband did much of these repairs. The tenant agreed that he is responsible for the \$330.00 for the stove repair and the \$100.00 light repair, accordingly I find that the landlord is entitled to \$430.00. As for the carpet, venetian blind, and paint claims, the landlord had no idea what the age of the items were and therefore could not provide sufficient evidence to support the rest of her damaged claim as required and noted above pursuant to section 67 of the Act, as a result; the remainder of the damages claim is dismissed.

Cleaning – 960.00, Carpet Cleaning \$300.00 and Garbage disposal - \$150.00

The landlord seeks \$40.00 per hour x 24 hours to clean the unit. Based on the documentation before me, I find that the reasonable cleaning rate of 25.00 x 20 hours to be appropriate for a total of \$500.00 for cleaning. The landlord did not provide sufficient documentation to support the garbage disposal and carpet cleaning cost. Based on the evidence before me, I find that a total of \$150.00 total for both of those items is appropriate. The landlord is entitled to a total of \$650.00.

Utilities \$269.72

The tenant agrees that he is responsible for this claim, accordingly; I find that the landlord is entitled to \$269.72.

Late Fees \$275.00

The tenant agrees that late fees are applicable but not during the state of emergency. The landlord indicated that she wants the late fees for whatever time frame is allowed. The late fees apply to the rent for September 2020 to March 2021 for a total of \$175.00, accordingly; the landlord is entitled to that amount.

Liquidated Damages \$250.00

The tenancy agreement was for March 7, 2020 to March 31, 2021. The tenant vacated the unit on March 18, 2021. The tenant did not “break the lease” as alleged by the landlord as the term was near its end in the final month, accordingly; the landlord is not entitled to this claim and it is dismissed.

Loss of Revenue April 2021

The landlord provided sufficient evidence that as a result of the tenant leaving the unit dirty and with some repairs required, they were not able to get the unit in a rentable condition and reasonably expect them to rent it by April 1, 2021, accordingly, I find that the landlord is entitled to \$1575.00.

As the landlord has been successful in this application, they are entitled to the recovery of the \$100.00 filing fee.

The landlord is entitled to retain the \$787.50 security deposit in partial satisfaction of the claim.

Conclusion

In summary, the landlord has been successful in the following claims:

1.	Unpaid March Rent	\$1575.00
2.	Damages	430.00

3.	Cleaning, Carpet Cleaning & Garbage Disposal	650.00
4.	Utilities	269.72
5.	Late fees	175.00
6.	Loss of Revenue for April 2021	1575.00
7.	Filing Fee	100.00
8.	Less Deposit	-787.50
	Total	<b>\$3987.22</b>

I grant the landlord an order under section 67 for the balance due of \$3987.22. This order may be filed in the Small Claims 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 23, 2021

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Residential Tenancy Branch