



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

On March 17, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, a Monetary Order for damages and compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 58-minute hearing. The Landlord testified and submitted receipts to support that they served the Tenant with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on March 26, 2021. The Landlord stated that the Tenant responded via text, on March 29, 2021, acknowledging the dispute and the pictures included with the package. As a result, I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed terms of the tenancy:

The one-year, fixed-term tenancy began on October 1, 2019. The rent was \$1,700.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$850.00. The Tenant abandoned the property on September 16, 2020.

The Landlord submitted a Repayment Plan and indicated that the Tenant failed to pay the full amount of rent during the months of March through to August 2020. The Landlord stated that the Tenant paid the full month of rent in September 2020 and as of September 30, 2020, the Tenant was in arrears for \$2,500.00. The Landlord is claiming compensation for \$2,500.00 in unpaid rent.

The Landlord stated that the Tenant was removed from the rental unit by ambulance, sometime around mid-September 2020 and did not return. The Landlord stated he entered the rental unit on September 20, 2020, in-company the RCMP, and conducted a move-out inspection. The Landlord testified that the rental unit required repairs, was extremely dirty and was full of furniture and garbage that required storage and disposal. The Landlord stated that he did not receive a Notice to End Tenancy from the Tenant and that she abandoned the rental unit. The Landlord is requesting compensation for the month of October 2020 as he was unable to rent the unit out due to the need for remediation. The Landlord is claiming one months' rent in the amount of \$1,700.00.

The Landlord submitted a Monetary Order Worksheet, photos, some of the related receipts and made the following claims for compensation:

1. New stove due to broken cooktop and broken element. The Landlord testified that it would have cost \$500.00 to repair the cook top and take over 60 days to do so. Costco receipt for \$699.99 plus taxes.
2. Broken vanity light in ensuite. Landlord claimed \$240.00 and submitted a receipt indicating multiple purchases adding up to \$238.94.
3. Replacement of carpet in downstairs bedroom. Landlord stated that the cat damaged the carpet by scratching through to underlay in front of the door. Landlord acknowledged the carpet was 3 years old when the Tenant moved in. No receipt submitted. No photo of damage. Claim for replacement: \$569.95
4. Replacement of kitchen floor. Landlord testified that the fridge and freezer was left open, and contents spilled/melted onto the floor. Damage from water and

garbage left on floor. Submitted picture of stain on sub-floor. Landlord acknowledged the laminate was 3 years old when the Tenant moved in. Landlord claimed \$2,417.44. Receipts submitted but unclear how Landlord reached this amount.

5. Submitted spreadsheet that explained that it took 91 hours to empty, repair and clean the rental unit. The Landlord charged \$30/hr for the labour. Claim for \$3,090.00.
6. Previous filing fees...not included in claim.
7. The Landlord submitted a receipt to have the locks changed on the rental unit. The Landlord claimed \$144.63.
8. Claim for pet damage deposit...not included in claim.
9. Flooring in bathroom replaced. Landlord testified that he could not remove the smell from the bathroom and around the toilet. Landlord submitted pictures of the poor condition in which the bathroom was left. Claim for \$277.44.
10. Replacement keys for Canada Post mailbox. No receipt. Claim for \$60.00.

The Landlord submitted a move-out inspection report; however, did not submit a move-in inspection report for the start of the hearing. The Landlord stated that he has a move-in inspection report and thought that he had submitted it. I gave the Landlord 2 hours to submit the move-in inspection report on the day of the hearing and the Landlord did so.

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.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for both unpaid rent and one month's compensation for October 2020, in the amount of **\$4,200.00**.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the Landlord has the burden to prove that they suffered a loss as a result of the Tenant violating the Act or the Tenancy Agreement; demonstrate the amount or value of the loss and prove that they acted reasonably to minimize that loss.

Section 32 of the Act sets out the responsibility of a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property. A tenant 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.

Section 37 states that when a tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

In this case, based on the Landlord's testimony and documentary evidence, I find that the Tenant failed to leave the rental unit reasonably clean and undamaged. I find that the Landlord has established that they have suffered a loss as a result of the Tenant violating sections 32 and 37 of the Act. Specifically, I find that the Tenant failed to remove their furniture and garbage from the rental unit, repair damage that occurred during the tenancy and to leave the unit reasonably clean.

As I have found that the Landlord has suffered a loss as a result of the Tenant violating the Act, I will now assess if the Landlord has demonstrated the amount or value of the loss and proven that they acted reasonably to minimize that loss. With regard to the Landlord mitigating the loss, I find that he did so as there was little opportunity for the Landlord to address the condition of the rental unit as the Tenant abandoned the unit without any notice to the Landlord.

The Landlord claimed that he had completed a move-in inspection and written report with the Tenant at the beginning of the tenancy. The Landlord did submit a move-in inspection report at the end of the hearing; however, I noted that it appears that the Tenant signed the section where they “agree to the following deductions from my security and/or pet damage deposit”. The Tenant did not sign the section where they do/do not agree that the report fairly represents the condition of the rental unit. Therefore, I find that the move-in condition report holds little weight in my consideration of the condition of the rental unit at the beginning of the tenancy.

1. New stove due to broken cooktop and broken element. I find the Landlord chose to buy a new stove instead of waiting to repair the old stove. I award the Landlord **\$500.00** in compensation, the amount for the repair.
2. Broken vanity light in ensuite. The Landlord claimed \$240.00 and submitted a receipt indicating multiple purchases adding up to \$238.94. I award the Landlord **\$167.00** as noted on the receipt for what appears to be the vanity light.
3. Replacement of carpet in downstairs bedroom. I find the Landlord failed to provide a picture of the damage or to identify a receipt for the amount claimed. I find that the Landlord failed to provide sufficient evidence to demonstrate the amount or value of the loss and therefore, dismiss this part of the Landlord’s claim.
4. Replacement of kitchen floor. The Landlord provided a picture of some swollen and cracked laminate tile; however, did not provide evidence of why the entire kitchen floor required replacement. The Landlord acknowledged the laminate was 3 years old when the Tenant moved in. Landlord provided some receipts; however, it is unclear how the Landlord reached the claimed amount. I award the Landlord the nominal amount of **\$500.00** for damage to the kitchen floor based on the pictures presented and undisputed testimony of the Landlord.
5. Labour to empty, repair and clean the rental unit. Based on the testimony and pictures submitted by the Landlord, I accept that the Landlord would have spent 90+ hours to ready the rental unit for a new tenant. I find the hourly rate of \$30.00 is reasonable. As such, I grant the Landlord’s claim for compensation in the amount of **\$3,090.00**.
6. Previous filing fees...not presented in claim.
7. The Landlord submitted a receipt to have the locks changed on the rental unit. I find that compensation for this claim is reasonable as the Tenant failed to return the keys to the Landlord at the end of the tenancy. I grant the Landlord’s claim for compensation in the amount of **\$144.63**.
8. Claim for pet damage deposit...not presented in claim.

9. Flooring in bathroom replaced. Based on the Landlord's undisputed testimony, pictures, and receipts, I find that the bathroom floor was left in poor condition and required replacement. I grant the Landlord's claim for **\$277.44**.
10. Replacement keys for Canada Post mailbox. As the Landlord failed to provide a receipt, I find that the Landlord failed to provide sufficient evidence to demonstrate the amount or value of the loss and therefore, dismiss this part of the Landlord's claim.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$850.00, in partial satisfaction of the monetary claim. I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent, compensation for damages, the filing fee for this Application, and to retain the Tenant's security deposit:

Item	Amount
Unpaid Rent and 1 months' compensation for no notice to end tenancy	\$4,200.00.
New stove	500.00
Vanity light	167.00
Nominal award toward replacement of kitchen floor	500.00
Labour to empty, repair and clean rental unit	3,090.00
Change locks	144.63
Replacement of bathroom laminate	277.44
Recovery of filing fee for this Application	100.00
Less security deposit	-850.00
Total Monetary Order	\$8,129.07

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$8,129.07.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$8,129.07. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 19, 2021

Residential Tenancy Branch