



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSDB-DR FFT
For the landlord: MNDL MNRL MNDCL FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order for \$2,265.00 for the return of their security deposit and pet damage deposit, and to recover the filing fee. The landlord applied for a monetary order for \$2,780.83 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and pet damage deposit towards any amount owing, and to recover the filing fee.

On July 12, 2021, the hearing commenced and after 23 minutes the hearing was adjourned to allow the tenant sufficient time to finish firefighting. The tenant stated that they would be available after November 1, 2021. As a result, both parties were emailed the Interim Decision and new Notice of Hearing both of which were dated July 13, 2021. The next hearing date was scheduled for November 2, 2021 at 9:30 a.m. Pacific Standard Time (PST). On November 2, 2021 at 9:30 a.m. PST, the only party to attend the reconvened hearing was the landlord and after the standard 10-minute waiting period, **the tenant's application was dismissed without leave to reapply** as the tenant failed to attend the hearing to present the merits of their dispute. Furthermore, I consider the landlord's application to be undisputed due to the tenant not attending the reconvened hearing. The Interim Decision should be read in conjunction with this decision as there was 3 orders made and a finding related to the Dispute Management System (DMS).

Pursuant to RTB Rules 7.1 and 7.3, the hearing proceeded with the landlord's application only. The landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As both parties attended the first hearing, I find the parties to have been sufficiently served.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2020 and reverted to a month-to-month tenancy after September 30, 2021. Monthly rent in the amount of \$2,300.00 was due on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenant at the start of the tenancy, which the landlord continues to hold. I will refer to the combined deposits of \$2,300.00 as "combined deposits" for the remainder of this decision.

The landlord is seeking \$2,780.83 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. February loss of rent (Feb 1 to 14, 2021)	\$1,150.00
2. Liquidated damages	\$500.00
3. Unpaid utilities (Hydro Nov 2, 2020-Jan 31, 2021: water, sewer, garbage)	\$538.00
4. Late rent payment fee for January 2, 2021 rent	\$25.00
5. Suite cleaning (3 hrs at \$35.00/hour)	\$105.00
6. Outside cleaning (2 hours at \$35.00/hour)	\$70.00
7. Pet damage (3 hours at \$35.00/hour)	\$105.00

8. Repairs (2.5 hours at \$35.00/hour)	\$87.50
9. Home Depot supplies	\$100.33
10. Filing fee	\$100.00
TOTAL	\$2,780.83

Regarding item 1, the landlord affirmed that the tenant was served with a 1 Month Notice to End Tenancy for Cause dated December 22, 2020 (1 Month Notice) and that the tenant did not dispute the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice was January 31, 2021. The landlord testified that tenant vacated the rental unit on January 31, 2021 and that the earliest the landlord could arrange a new tenant for after cleaning the rental unit and completing the repairs was February 15, 2021.

The landlord affirmed that the new tenants paid the same monthly rent, which is \$2,300.00 per month, which meant the new tenants only paid \$1,150.00 for February 15-28, 2021 and that the landlord suffered a loss of rent of \$1,150.00 for February 1-14, 2021 as a result of the tenant breaching the Act, which resulted in the 1 Month Notice being issued.

Regarding item 2, the landlord has claimed \$500.00 for liquidated damages, which is clause 6 of the signed tenancy agreement submitted in evidence. Clause 6 reads as follows:

6. **LIQUIDATED DAMAGES.** If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.

[Reproduced as written]

Regarding item 3, the landlord has claimed \$538.00 for unpaid utilities between November 2, 2020 and January 31, 2021. The landlord referred to utility bills submitted in evidence which supports the amount being claimed. The landlord also clarified that the tenant's portion of the utility bills was 50%, which the utility bills indicate from the landlord. In addition, the tenancy agreement indicates that electricity, water, sewage disposal, heat, hot water, sewer supply and garbage are not included in the monthly rent.

Regarding item 4, the landlord has claimed \$25.00 for the January 2, 2021, late rent payment as rent was due by midnight on January 1, 2021.

Regarding item 5, the landlord has claimed \$105.00 to clean the inside of the suite. The landlord provided photo evidence of how dirty the inside of the rental unit was. The landlord stated that they are charging \$35.00 per hour for their labour and that it took 3 hours to clean the inside of the rental unit. Some of the photos show a blind on the floor, marks on the walls, a mess behind the stove, etc.

Regarding item 6, the landlord has claimed \$70.00 to clean the outside of the rental unit. The landlord provided photo evidence of how dirty the outside of the rental unit was. The landlord stated that they are charging \$35.00 per hour for their labour and that it took 2 hours to clean the outside of the rental unit. Some of the photos show oil on the driveway that was not there before the tenant moved in. The landlord stated that the oil was difficult to remove from the driveway.

Regarding item 7, the landlord has claimed \$105.00 to repair the pet damage caused by the tenant's pet. The landlord stated that they are charging \$35.00 per hour for their labour and that it took 3 hours to clean the rental unit due to the smell of pet urine and damaged flooring, the latter of which is shown in the photo evidence.

Regarding item 8, the landlord has claimed \$87.50 to complete the repairs of the other damage caused by the tenant. The landlord stated that they are charging \$35.00 per hour for their labour and that it took 2.5 hours to remove a damaged blind, repair it and then reinstall the blind. The landlord also described hole patching in the master bathroom and the removal of a shelf installed by the tenant.

Regarding item 9, the landlord has claimed \$100.33 for Home Depot cleaning and repair supplies. A receipt was submitted in evidence, which supports that the landlord spent \$100.33 as claimed for cleaning and repair supplies, including taxes. The landlord describes the items on the Home Depot receipt as pet odour removal, driveway cleaner, floor pre-treatment, floor shine coat, bleach, bulbs for master bedroom, bulbs for hallway, mop, cleaning spray and cleaning pads.

Regarding item 10, I will address the filing fee later in this decision.

Analysis

Based on the undisputed documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Item 1 – Given the undisputed 1 Month Notice with an effective vacancy date of January 31, 2021 and that tenant vacated the rental unit on January 31, 2021, I accept

that the earliest the landlord could arrange a new tenant was on February 15, 2021. I have reached this finding due to the cleaning and repairs that were required which will be addressed further below. I also accept the testimony before me that the landlord suffered a loss of \$1,150.00 for February 1-14, 2021 rent. As a result, I find the tenant is liable for the loss of rent from February 1-14, 2021 and I grant the landlord **\$1,150.00** for this item accordingly.

Item 2 - The landlord has claimed \$500.00 for liquidated damages, which I find is supported by clause 6 of the signed tenancy agreement. I find the tenant breached the fixed term tenancy by way of the 1 Month Notice for Cause, which was undisputed by the tenant. Given the above, I award the landlord **\$500.00** for liquidated damages as claimed and find that the amount is reasonable under the Act.

Item 3 - The landlord has claimed \$538.00 for unpaid utilities between November 2, 2020 and January 31, 2021. I find the landlord presented the utility bills and clarified that the tenant's portion of the utility bills was 50%. I also find that the utility costs claimed are not included in the monthly rent. Therefore, I find the landlord has met the burden of proof and I award the landlord the full amount claimed for this item of **\$538.00**.

Item 4 - The landlord has claimed \$25.00 for the January 2, 2021, late rent payment as rent was due by midnight on January 1, 2021. I find the tenant breached section 26 of the Act, which required that rent be paid by midnight on January 1, 2021. Therefore, I award the landlord the late fee of **\$25.00** as claimed.

Item 5 - The landlord has claimed \$105.00 to clean the inside of the suite. I find the landlord provided sufficient photo evidence of how dirty the inside of the rental unit was. I also find the amount claimed to be reasonable and as a result, I grant the landlord **\$105.00** for this item as claimed.

Item 6 - The landlord has claimed \$70.00 to clean the outside of the rental unit. I find the landlord provided sufficient photo evidence of the oil damage to the driveway. I also find the amount claimed to be reasonable and as a result, I grant the landlord **\$70.00** for this item as claimed.

Item 7 - The landlord has claimed \$105.00 to clean the pet urine from the rental unit. I find the landlord provided sufficient testimony of the smell in the rental unit at the end of the tenancy. I also find the amount claimed to be reasonable and therefore I grant the landlord **\$105.00** as claimed as I find the tenant breached section 37(2)(a) of the Act which applies and states:

37(2) When a tenant vacates a rental unit, **the tenant must**

(a)leave the rental unit reasonably clean, and undamaged except for
reasonable wear and tear, and
[emphasis added]

Item 8 - The landlord has claimed \$87.50 to complete the repairs of the other damage caused by the tenant. I accept the landlord's testimony that it took 2.5 hours to remove the blind, repair it and then reinstall the blind. I also accept that the landlord had to patch a hole in the master bathroom and the remove of a shelf installed by the tenant. I also find the amount claimed to be reasonable. Therefore, I award the landlord **\$87.50** for this item.

Item 9 - The landlord has claimed \$100.33 for Home Depot cleaning and repair supplies. A receipt was submitted in evidence, which supports that the landlord spent \$100.33 as claimed for cleaning and repair supplies, including taxes. Given the evidence before me I find the tenant is liable for the cleaning supplies of **\$100.33** and that the amount is reasonable.

Item 10 – Regarding the filing fee, as the landlord's application was fully successful, and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee.

Based on the undisputed testimony of the landlord, I find the landlord has met the burden of proof as the tenants breached the Act as described above. The landlord continues to hold the tenants' combined deposits of \$2,300.00, which has accrued no interest since the start of the tenancy. I find that the landlord has established a total monetary claim of **\$2,780.83** as described above.

I authorize the landlord to retain the tenants' full combined deposits of \$2,300 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$480.83**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The landlord established a total monetary claim of \$2,780.83 and has been authorized to retain the tenants' combined deposits of \$2,300.00 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$480.83. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants are cautioned that they can be held liable for all costs related to 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 tenants.

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: November 5, 2021

Residential Tenancy Branch