



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDL, MNRL, FFL

### **Introduction**

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent, unpaid utilities, and damage to the rental unit.

The landlord appeared for the hearing and was affirmed. The landlord was ordered to not make an unofficial audio recording of the proceeding.

There was no appearance on part of the tenant. Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord stated that he received a Substituted Service Order (dated June 9, 2021) from the Residential Tenancy Branch on June 14, 2021 and he sent the proceeding package, the landlord's evidence, and a copy of the Substituted Service Order to the tenant at the address authorized in the Substituted Service Order on June 15, 2021, via registered mail. The landlord orally provided the registered mail tracking number as proof of service. A search of the registered mail tracking number showed the registered mail was delivered by Canada Post on June 18, 2021.

I was satisfied the landlord duly served the tenant with the hearing materials, and other required documents, in a manner that complies with section 89 of the Act and I continued to hear from the landlord without the tenant present.

### **Issue(s) to be Decided**

Has the landlord established an entitlement to recover unpaid and/or loss of rent, unpaid utilities, and costs to rectify damage to the rental unit from the tenant, as claimed?

### Background and Evidence

The landlord submitted that the tenant originally took possession of the rental unit as a sub-let of a former tenant. The landlord and the tenant executed a new tenancy agreement for a tenancy set to commence on March 1, 2020 for a one year fixed term. The landlord collected a security deposit of \$1150.00 and the tenant was required to pay rent of \$2300.00 on the first day of every month. The tenancy agreement indicates the rent does not include hydro. The landlord provided a copy of the tenancy agreement executed by the parties.

The tenancy agreement indicates that the rent would increase to \$2350.00 starting May 1, 2020. The landlord submitted that this was to reflect a rent increase issued under the former tenancy agreement and prior to the moratorium on rent increases. The landlord also stated that he collected a \$50.00 "application fee" from the tenant.

Below, is an image of the landlord's monetary claim against the tenant:

April, 2020 rent not paid	\$ 700-
May, 2020 rent not paid	\$ 850-
June, 2020 rent not paid	\$ 2350-
July, 2020 rent not paid	\$ 2350-
August, 2020 rent not paid	\$ 2350-
Hydro not paid May, 2020 bill	\$ 30.02
Hydro not paid June, 2020 bill	\$ 27.47
Hydro not paid July, 2020 bill	\$ 13.22
Tenant directed to use damage deposit towards unpaid rent	( \$ 1150- )
IKEA - stove top installation fee	Stove top replacement \$ 596.88
Total monetary order claim	
	\$ 8117.59

The landlord submitted that the tenant paid a portion of rent due for April 2020 and May 2020 and no rent was paid for the subsequent months.

On June 2, 2020 the tenant sent the landlord an email informing him that she would be moving out on June 5, 2020. The landlord arranged to meet the tenant at the rental unit on June 5, 2020 to retrieve the keys but the tenant did not show up. On June 15, 2020, the landlord requested to meet the tenant at the rental unit on June 18, 2020, via email, to give the tenant a second opportunity to participate in an inspection but the tenant did not respond.

The landlord testified that he proceeded to inspect the unit on June 18, 2020 and make some minor repairs and replace the stove top that was damaged during the tenancy.

The landlord submitted the glass stove top was smashed during the tenancy. He purchased a replacement stove top and hired an electrician to install it. The landlord provided a photograph of the damaged stove top, a receipt for purchase of a replacement stove top, and an email from the electrician hired to install it.

The landlord advertised the rental unit for rent in June 2020 but he did not receive much response so he hired a real estate company to find a replacement tenant. A replacement tenant was found by the real estate company for a tenancy starting on September 1, 2020 at the reduced rent of \$2250.00 per month.

The landlord testified that he would send copies of the hydro bills to the tenant and she made payments to up the last payment received on May 11, 2020. The landlord testified that the tenant's last payment for hydro satisfied the hydro payments the landlord made up to early May 2020; however, the tenant did not pay for hydro bills received after that. The landlord provided a printout of the hydro account showing the monthly charges by BC Hydro and the landlord's payments on account.

The landlord testified that the tenant did instruct him to keep her security deposit and put it towards the unpaid rent. The landlord pointed out that he deducted the security deposit on the Monetary Order worksheet he prepared.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim on a balance of probabilities. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

### **Unpaid and/or loss of rent**

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent, authorization has been given by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

Upon review of the tenancy agreement, I find the tenant was obligated to pay rent of \$2300.00 on the first day of every month. I find the term providing for an increase to \$2350.00 starting May 1, 2020 to be non-compliant with the Act and not enforceable for reasons provided below.

Section 42 of the Act provides that a rent increase may not be imposed within 12 months of the start of the tenancy. Further, Ministerial Order No. 89 (enacted March 30, 2020 in response to the Covid-19 pandemic) prohibited rent increases from taking effect even if a valid Notice of Rent Increase had been issued before the Ministerial Order was enacted. Therefore, I find the tenant's rent obligation remained \$2300.00 for the duration of her tenancy.

I was not presented any evidence to suggest the tenant had a lawful right to withhold rent from the landlord, with the exception of recovery of the unlawful "application fee" the tenant paid at the start of the tenancy. Section 15 of the Act provides the following prohibited fees:

#### **Application and processing fees prohibited**

**15** A landlord must not charge a person anything for

(a) accepting an application for a tenancy,

- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

While a tenant could not be evicted for unpaid rent under Ministerial Order No. 89, the rent liability was not extinguished by the Ministerial Order, or subsequent Ministerial Orders.

The tenant brought the fixed term tenancy to an end when she vacated the rental unit on June 5, 2020. Where a tenant ends a fixed term tenancy early, the tenant may be held liable to compensate the landlord for loss of rent for the remainder of the fixed term; however, the landlord remains obligated to take reasonable measure to mitigate loss of rent.

The tenant gave very short notice to the landlord by way of an email sent on June 2, 2020. I accept the landlord's unopposed testimony that he proceeded to advertise the unit for rent, including the hiring of a real estate company, to search for a replacement tenant starting in June 2020. I further note that from the BC Hydro printout, it is clear the electricity consumption was low during July 2020 and August 2020 before rising again as seen by the September 2020 BC Hydro invoice. Therefore, I accept the landlord's submission that despite efforts to secure a replacement tenant shortly after the tenancy ended, a replacement tenant was not secured until September 1, 2020.

In light of the above, I award the landlord unpaid and/or loss of rent for the months of April 2020 through August 2020 in the following amounts:

April 2020 as claimed	\$ 700.00
May 2020 (\$850.00 claimed less unlawful rent increase of \$50.00)	800.00
June 2020 (limited to \$2300.00)	2300.00
July 2020 (limited to \$2300.00)	2300.00
August 2020 (limited to \$2300.00)	2300.00
Less: unlawful application fee collected by landlord	<u>(50.00)</u>
Unpaid and/or loss of rent	\$8350.00

The landlord testified that the tenant authorized him to retain the security deposit to use toward the unpaid rent; however, I did not see this reduced to writing by the tenant. For added certainty, I authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent pursuant to the authority afforded me under the Act. As

such, I deduct \$1150.00 from the award above, and I find the landlord entitled to recover the net amount of \$7200.00.

### **Utilities**

The tenancy agreement provides that rent does not include electricity (hydro). The landlord provided evidence to demonstrate the hydro charges incurred from May 2020 through July 2020 for which the tenant did not pay. Since this was a fixed term tenancy agreement, and the unit was vacant until September 1, 2020, I find the tenant obligated to pay the hydro for the months in which she occupied the rental unit and the vacant months. The landlord only requested recovery up to the invoice received in July 2020. Therefore, I grant the landlord's request to recover unpaid utilities for the months of May 2020 through July 2020 in the sum of: \$70.71 (\$30.02 May 2020 invoice + \$27.47 June 2020 invoice + \$13.22 July 2020 invoice).

### **Damage**

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The landlord provided unopposed evidence that the stove top was damaged at the end of the tenancy but it was not damaged when the tenancy started. As such, I find the tenant responsible for repairing the stove top.

The landlord provided evidence in support of the amount expended to purchase and install a new stove top and I grant the landlord's claim of \$596.88, as requested.

### **Filing fee**

The landlord had success in this application and I further award the landlord recovery of the \$100.00 filing fee.

## Monetary Order

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant in the net amount calculated below:

Unpaid and/or loss of rent	\$8350.00
Less: security deposit	<u>(1150.00)</u>
Unpaid/loss of rent (net of security deposit)	\$7200.00
Unpaid hydro	70.71
Damage to stove top	596.88
Filing fee	<u>100.00</u>
Monetary Order	\$7967.59

## Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$7967.57 to serve and enforce upon the tenant.

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: November 04, 2021

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Residential Tenancy Branch