



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Each party confirmed they were not recording the hearing.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord stated that the fixed term tenancy commenced on November 1, 2017 and at the expiry of the term became monthly. The landlord stated that rent in the amount of \$1,350.00 was due on the first day of each month and that a security deposit in the amount of \$700.00 was paid, which is still held in trust by the landlord. The landlord submitted a copy of the agreement. The landlord requested an award for rent for the month of October 2021 which is outstanding; the tenant did not vacate until October 15, 2021.

The landlord stated that the landlord obtained an Order of Possession effective September 30, 2020 under a file number referenced on the first page. The tenant did not vacate. The landlord obtained a Writ and retained the services of a bailiff for which he seeks compensation. The landlord submitted a copy of the receipt for the bailiff expenses.

The landlord stated that a condition inspection report was not conducted on moving out because the bailiff removed the tenant. The tenant did not leave a forwarding address.

The landlord testified that after the tenant moved out the unit needed cleaning. Garbage and debris were hauled away, and tipping fees incurred for which the landlord seeks compensation. The landlord submitted photographs of the unit taken when the tenant vacated showing debris and required cleaning. The landlord did the cleaning and garbage removal himself and estimated the work took ten hours..

During the hearing, the landlord clarified the expenses claimed as follows:

ITEM	AMOUNT
Bailiff fees	\$2,235.00
Rent outstanding (October 2021)	\$1,350.00
Writ of Possession	\$140.00
Cleaning, removal debris	\$350.00
Application fee	\$100.00
<b>TOTAL CLAIM – DAMAGES and COMPENSATION</b>	<b>\$4,175.00</b>

The landlord testified the landlord received the tenant's forwarding address on June 22, 2021 and the landlord filed for dispute resolution on June 25, 2021.

The landlord requested authorization to apply the security deposit to the monetary award as follows:

ITEM	AMOUNT
Monetary Award (above)	\$4,175.00
(Less security deposit)	(\$700.00)
<b>TOTAL MONETARY ORDER REQUESTED</b>	<b>\$3,475.00</b>

- The landlord requested a Monetary Order of **\$3,475.00**.

The tenant claimed that the landlord had no right to evict him, and the tenant was made homeless by the eviction. The tenant objected to all the landlord's claims and expressed many grievances regarding the landlord unrelated to this claim.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations, or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided believable testimony supported in all material aspects. I find the landlord's evidence is of greater weight than the tenant's.

I have considered all the evidence submitted by the landlord, including the receipt, the photographs showing the unit needed cleaning, and the bailiff report. I find the landlord's evidence credible and reliable in all aspects.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant did not pay rent for October 2020, the unit needed cleaning when the tenant vacated, and the tenant left garbage which had to be removed. I find the tenant is responsible, the amounts claimed are reasonable and supported by the evidence, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amounts requested for these aspects of the claim.

I accept the landlord's testimony that the landlord obtained a Writ of Possession and bailiff fees as claimed. I allow these claims for reimbursement.

In consideration of the evidence, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the landlord's claim.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant an award to the landlord in the amount of **\$4,175.00**. My award to the landlord is summarized as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Bailiff fees	\$2,235.00
Rent outstanding (October 2021)	\$1,350.00
Writ of Possession	\$140.00
Cleaning, removal debris, trucking, and tipping fees	\$350.00
Application fee	\$100.00
<b>TOTAL CLAIM – DAMAGES and COMPENSATION</b>	<b>\$4,175.00</b>

I authorize the landlord to apply the security deposit to the award and grant a Monetary Order of **\$13,836.47** as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Monetary Award (above)	<b>\$4,175.00</b>
(Less security deposit)	(\$700.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$3,475.00</b>

The landlord is entitled to a Monetary Order in the amount of **\$3,475.00**

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$3,475.00.**

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may be filed the order in the Courts of the Province of British Columbia to be 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: November 07, 2021

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Residential Tenancy Branch