



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1932374 Alberta LTD, DBA Cathay  
Resort and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

**MNDCT, FFT (tenant)**

**MNDL-S, MNRL-S, MNDCL-S, FFL (landlord)**

### **Introduction**

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

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also 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.

HC and CH attended as agents for the corporate landlord (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

At the start of the hearing, I informed the landlord that recording of the hearing is prohibited under the Rules of Procedure. The landlord confirmed they were not recording the hearing.

The landlord confirmed the email address to which the Decision shall be sent.

### *Service Upon Tenant*

The landlord testified the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 19, 2021, and deemed received by the tenant five days later under section 90 of the *Act*, on November 24, 2021. The landlord explained that the tenant had not provided a forwarding address to the landlord and the landlord served the tenant at the address provided in her Application for Dispute Resolution.

Section 89 of the *Act* provides that the Notice of Hearing and Application for Dispute Resolution may be sent to the tenant as follows:

(c) by sending a copy by registered mail to the address at which the person resides [...].

Pursuant to sections 89 and 90 and based upon the affirmed testimony of the landlord, I find that on November 24, 2021, the landlord served the tenant by registered mail sent to the address at which the tenant resided.

### *Dismissal of Tenant’s Application*

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional thirteen minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply.

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

As the tenant did not attend the hearing, the landlord provided uncontradicted testimony. While I have turned my mind to all the documentary evidence and the testimony, not all details of the landlord's submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

The landlord submitted a comprehensive evidence package supporting the landlord's claims in all aspects.

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	November 19, 2019
Date tenant vacated	July 10, 2021
Monthly rent payable on 1 <sup>st</sup>	\$675.00
Security deposit	\$337.50
Date of landlord's application	October 3, 2021
Forwarding Address	Not provided

The landlord testified as follows. A condition inspection was conducted on moving in which indicated the unit was in good condition in all material aspects.

The tenant moved out on July 10, 2021, without providing notice or a forwarding address.

The landlord testified that they the unit needed cleaning and painting when the tenant vacated, and it had been clean as well as freshly painted on moving in. The landlord incurred expenses for cleaning and painting and submitted receipts for expenses.

The landlord attempted to rent the unit as soon as possible and an occupant moved in mid-July 2021. The landlord claims lost rent for the month of July 2021 and for half of August 2021.

#### Landlord's Claims

The landlord requested compensation for the following rent:

ITEM	AMOUNT
Rent – month July 2021	\$675.00
Rent – half of August 2021	\$337.50

<b>TOTAL CLAIM – RENT</b>	<b>\$1,012.50</b>
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The landlord also requested compensation for the following cleaning and painting expenses:

<b>ITEM</b>	<b>AMOUNT</b>
Cleaning	\$138.96
Painting	\$275.64
<b>TOTAL CLAIM – CLEANING, PAINTING</b>	<b>\$414.60</b>

The landlord described each claim as follows.

#### Rent

The landlord testified that the tenant owed rent for the month(s) of July and August 2021 as stated above in the amount of **\$1,012.50** and the landlord requested compensation for this amount.

The tenant did not pay rent for this period.

The landlord stated they cleaned and painted the unit, advertised the unit for rent, and re-rented it on August 15, 2021.

The landlord claimed compensation for rent for **\$1,012.50**.

#### Cleaning and Painting Expenses

The landlord requested compensation for cleaning and painting as set out above. They provided dated receipts for each of the expenses in the total amount of **\$414.60**.

#### Total Monetary Award Requested

The landlord's claim for compensation is summarized as follows:

ITEM	AMOUNT
Rent	\$1,012.50
Cleaning and Painting	\$414.60
<b>TOTAL</b>	<b>\$1,427.10</b>

### Security Deposit and Filing Fee

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Claim (above)	\$1,427.10
Filing fee reimbursement	\$100.00
(Less security deposit)	(\$337.50)
<b>Monetary Order Requested</b>	<b>\$1,189.60</b>

The landlord requested a monetary order of **\$1,189.60**.

### 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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?

4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

. . .

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Each of the above four tests are considered in my findings.

I give substantial weight to the landlord's evidence as summarized above. Based on the uncontradicted credible evidence of the landlord, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

### Rent

I accept the landlord's evidence and I find the landlord has met the burden of proof on a balance of probabilities that the tenant vacated leaving rent owing as claimed.

I accept the landlord did not have rental income from the unit after the tenant moved out for the period claimed. I accept the landlord's testimony that the landlord took all reasonable steps to mitigate expenses, advertise the unit for rent, and locate a replacement occupant.

I therefore find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

*Cleaning and Painting*

I accept the landlord's evidence and I find the tenant did not leave the unit in a reasonably clean condition as required under section 32. I also accept the tenant damaged the paint in the unit and did not meet the tenant's obligation to repair under section 32 of the Act, as follows:

*32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*32(3) A tenant of a rental unit 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.*

I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord fairly seeks compensation. I find they incurred the reasonable costs for which they seek reimbursement. I accept the landlord's evidence that they made reasonable efforts to mitigate loss and reduce expenses.

*Filing Fee and Security Deposit*

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

I authorize the landlord to apply the security deposit to the award.

I grant a monetary award to the landlord summarized as follows:

ITEM	AMOUNT
Claim (above)	\$1,427.10
Filing fee reimbursement	\$100.00
(Less security deposit)	(\$337.50)
<b>Monetary Order</b>	<b>\$1,189.60</b>



In summary, I grant the landlord a Monetary Order of **\$1,189.60**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$1,189.60**

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the order in the Provincial Court (Small Claims) 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: March 15, 2022

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Residential Tenancy Branch