



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNDCL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both parties

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 13, 2021 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

The landlord also testified that she served all of her evidence to the tenant by registered mail on February 24, 2022, the tenant confirmed he received the landlord's evidence and amendment documents on February 25, 2022.

Residential Tenancy Branch Rule of Procedure 2.5 stipulates that the documents that must be submitted with an Application for Dispute Resolution, to the extent possible, at the same time as the Application include among other things "copies of all other documentary and digital evidence to be relied on in the proceeding."

Rule of Procedure 3.1 requires the applicant to serve the respondent with all evidence submitted with their Application, within three days of receipt of the notice of hearing package. Rule of Procedure 3.14 states: "...documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing."

As per the tenant's testimony I find the landlord failed to ensure the tenant had received her evidence within the 14 day requirement – he received 13 days before the hearing was convened. However, I am not convinced that the tenant was prejudiced by receiving this evidence one day late, except by the actions he took, in deciding not to submit any of his existing evidence at that time.

The tenant testified that he received the landlord's evidence on the same day that he was intending to send his own evidence to the landlord and the Residential Tenancy Branch (February 24, 2022). He stated that once he received it, he did not have time to generate any "statutory statements"; however, I find it did not prevent him from submitting any existing evidence or documents pertaining to his response to the landlord's claim. Furthermore, the tenant was and did provide fulsome testimony in regard to all matters related to the landlord's claims.

As such, I have allowed the landlord's documentary evidence and I have considered it along with the testimonial submissions of both parties in making this decision.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

While the tenant requested an adjournment when asked to explain why he need the adjournment he began responding to the merits of the landlord's claim. As such, I determined that he was sufficiently prepared to respond to the landlord's claim, in particular since the burden rests with the landlord to provide sufficient evidence to establish her claim.

I was not satisfied that the adjournment would provide any assistance in reaching a resolution. I also find that the sole reason that the tenant had failed to provide any evidence was because of his own actions to fail to submit anything at all once he received the landlord's evidence. I was not satisfied an adjournment was required to provide the tenant an opportunity to be heard or that there was any prejudice to the tenant to proceed.

When I clarified the landlord's Application for Dispute Resolution with her at the start of the hearing I noted that because her claim for cleaning and damage compensation was in the amount of \$900.00 but her invoice for the work was for \$1,050.00 I could only consider the amount noted on her Application (\$900) as she had not submitted a Request to Amend her application to the increased amount.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent, for damage to and cleaning of the rental unit; for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 29, 2019 for a 6 month fixed term tenancy beginning on September 1, 2019 that converted to a month to month tenancy on March 1, 2020 for a monthly rent of \$1,315.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid;
- A copy of a letter from the tenant dated July 29, 2019 providing his notice to end the tenancy effective August 31, 2021 and providing his forwarding address for return of his security deposit;
- A copy of a cheque from the tenant dated August 1, 2021 for rent for the month of August 2021 in the amount of \$1,333.00. There is a handwritten notation on the bottom of the cheque that states: "Cheque for unpaid August rent";
- A copy of a Condition Inspection Report dated August 30, 2019 which records the condition of the rental unit at the start of the tenancy, there is no record on this document of the condition at the end of the tenancy;
- Several photographs, including a listing of what each photograph depicts; and
- An invoice/receipt in the amount of \$1,050.00 for the removal and replacement of vertical blinds; washing of walls; wall repair and painting; removal and reinstallation of a new bathtub flange; rug cleaning; an appliance disassembly and cleaning.

At the outset of the hearing, I sought to have the landlord clarify her submissions regarding when the tenancy ended. In her Application, she wrote that the tenancy ended on August 11, 2021, however in her written submissions she wrote that she had no idea when the tenant moved out because he did so with no notice but she thought it was August 30, 2021. However, the landlord had submitted a copy of a notice to end tenancy dated July 26, 2021 in which the tenant also provided his forwarding address.

I also note that the landlord submitted her Application for Dispute Resolution on August 24, 2021 seeking compensation for unpaid rent and the costs of cleaning the unit and making a repair to the bathtub – or 6 days prior to the date she said in her written submission that she thought the tenant vacated the rental unit.

The landlord stated that she had received his notice to end tenancy, but he was in and out of the property several times in August and she was not sure when he actually left. She stated that she had not scheduled a move out inspection with the tenant and that the tenant stopped communicating with her, because she didn't want to leave a notice

on the rental unit door, but she provided no reason why she didn't mail him a letter setting the inspection time.

The tenant testified that he had provide notice to the landlord and he intended to move out of the rental unit at the end of August. He testified he took a load of his belongings to another province in early August and returned to gather up other items and that he had made arrangements to complete cleaning activities at a later time.

The tenant testified that when he was loaded his car and truck up on August 5, 2021 the landlord attended the property and was upset because she could not cash his rent cheque. He stated the landlord threatened that she would wanted him gone and she would be getting a bailiff to come and remove his possessions from the property, so he left the rental unit that day and has not returned to BC since. The tenant testified the landlord's maintenance employee had to calm the landlord down and told the tenant he should just leave.

The landlord testified that she doesn't recall this occurrence and that her maintenance employee would never have told her what to do because he is her employee and employees don't tell employers what to do. She did confirm this was the last time she saw the tenant and that she never once during the month went back to the property to see if the tenant had left until later in August.

At the outset of the hearing, I had the landlord clarify why she was seeking August 2021 rent when she had provided into evidence of a copy of the tenant's rent cheque for the month of August 2021. She stated that she had attempted to cash it but the bank would not allow it, however she did not have any evidence from the bank confirming this.

However, during the hearing the tenant confirmed he had put a stop payment on the August rent cheque. He testified that he had received a Notice of Rent Increase from the landlord on September 28, 2020 that was to take effect on January 1, 2021 increasing the rent from \$1,315.00 to \$1,333.50. He stated that he had found out in June 2021 that there had been a rent increase freeze in place at the time the landlord issued the increase notice.

He further testified that he asked the landlord to cancel his July and August rent cheques and he would reissue them for the correct amount (the original amount of rent according to the tenancy agreement) and deduct the amount of overpayment he had incurred from January 1, 2021 to date. As the landlord did not return either of those cheques he put a stop payment on his August 2021 rent cheque.

He accepts that he owes the landlord rent for the month of August 2021 in the amount prior to the rent increase notification and less the overpayment he incurred between January 1, 2021 and July 31, 2021 or \$18.50 per month for a total of \$129.50.

The landlord could not recall if she had increased the rent or had a discussion with the tenant regarding any such overpayment.

The landlord seeks compensation for lost revenue for the month of September in the amount of \$1,315.00 because of the work required to clean the rental unit and repair damages because of the condition of the rental unit. The landlord confirmed she did not complete the move out Condition Inspection Report but as noted above has provided pictures.

The landlord confirmed that she did not secure new tenants for the rental unit until late in September 2021 for them to move into the unit in October 2021. She confirmed that at the time she says the tenancy ended she did not have any new tenants moving into the rental unit.

The landlord seeks compensation also for cleaning the rental unit, in the amount of \$900.00. While she submitted an invoice for the work in the amount of \$1,050.00 which included all cleaning and repairs for what appears to be a charge of \$25.00 per hour for 42 hours worth of work there is no breakdown on how much time was required for each of the activities.

The landlord submits that the reason it required so much work was that the tenant smoked in the rental unit despite him not being allowed to do so, pursuant to the tenancy agreement. The tenant submitted that he did not smoke in the unit, however, he did burn a lot of scented candles for the duration of the tenancy since his unit was right next to the garbage bins and the smell of the bins required constant "masking".

However, the tenant acknowledges that he did not have an opportunity to full clean the rental unit, because of the events of August 5, 2021 where he felt he had no option but to just leave the property. He stated that he had arranged for carpet cleaning and other cleaning but that he had to cancel those plans after August 5, 2021.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to

provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the burden rests with the landlord as this is her claim.

I find, however, that even prior to the requirement for additional evidence the landlord's submissions and testimony are at best, unreliable, and in the extreme false. I make this finding, in part, because she cannot explain why she indicated, on her Application, the end of the tenancy was August 11, 2021; in her submission that it might have been August 30, 2021; and that she filed her Application on August 24 – before she now says the tenant moved out of the rental unit.

I also question why the landlord could not remember a rent increase or a discussion with the tenant about the overpayment of rent when she clearly had his August 2021 cheque made in the amount of \$1,333.50 but she only claimed \$1,315.00 for rent on her Application.

However, as the tenant acknowledges that he does owe rent for the month of August 2021, I will grant the landlord is entitled to rent. As to the amount, I am satisfied that the landlord imposed a rent increase during the rent freeze, as I find the tenant's submissions on this point are more reliable than the landlords. I find the amount of overpayment must be deducted from the amount of this rent. As such, I award the landlord \$1,185.50 for August 31, 2021.

The landlord's justification in her Application for seeking lost revenue for the month of September 2021 is that she didn't have time to complete cleaning or required repairs to the rental unit in time to rent it to new tenants for the month of September 2021. However, as the landlord has provided inconsistent and unreliable submissions as to when the tenancy actually ended, I prefer the tenant's submissions that he vacated the property on August 5, 2021.

As such, I find the landlord had from August 6, 2021 to prepare the rental unit for new tenants for September 2021 and as such the tenant should not be held responsible for the landlord's failure to obtain new tenants for that month. I dismiss this portion of the landlord's claim, without leave to reapply.

I also note that even if the landlord had not been aware of when the tenant actually moved out of the rental unit combined with the fact that she stated communication had broken down between her and the tenant, she took no action to see if or when the tenant actually vacated the rental unit.

Section 37 of the *Act* stipulates that 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

- b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Again, I accept that the tenant acknowledges that he did clean the rental unit prior to the end of the tenancy and that did require cleaning. As such, I will award the landlord compensation for cleaning of the rental unit. However, as noted in the Introduction of this decision the landlord is bound by her original claim of \$900.00 not the \$1,050.00 she submitted as her invoice.

Further, the landlord also confirmed she would not pursue her claim for the work on the bathtub. However, there is no breakdown of the specific costs for this repair, except for the description of the work as stated was to remove and reinstall new bathtub flange. In addition, the landlord provided no testimony or explanation why the appliances required “disassembly and cleaning” – while they may have required cleaning it is not clear why they required disassembly or how long this took.

As a result, with all things considered, I grant the landlord cleaning and repair costs in the amount of \$500.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant’s forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on my finding above, I also find that by filing her Application for Dispute Resolution on August 24, 2021 and stating on it that the tenancy ended on August 11, 2021 the landlord was attempting to manipulate the facts to make it look like she was trying to comply with her requirement to file an Application to claim against the security deposit within the required 15 days from the end of the tenancy.

As to the landlord’s Application to retain the security deposit was submitted on August 24, 2021 and in conjunction with my finding above that the tenancy ended on August 5, 2021 I find the landlord failed to comply with the requirements of Section 38(1) and the tenant is entitled to double the amount of the security deposit.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,735.50** comprised of \$1,185.50 rent owed; \$500.00 for cleaning and repairs and \$50.00 of the \$100.00 fee paid by the landlord for this application, as she was only partially successful.

I order the landlord may deduct double the amount of the security deposit held t of \$1,200.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$529.50**. 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) and 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 10, 2022

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Residential Tenancy Branch