



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MNDC MND MNSD MNR FF

Tenant: CNC RP RR FFT MNDCT MNRT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. An initial hearing was conducted on November 5, 2021. Another Arbitrator conducted the first hearing, and issued an Interim Decision on November 10, 2021. In this Interim Decision, the parties discussed several preliminary matters, including service of the documents, and the type and scope of grounds sought on each application. This is detailed in the Interim Decision.

The initial Arbitrator, who had conduct of the first hearing, was unable to attend the second hearing due to unforeseen circumstances. Since the first hearing was only to address preliminary matters, and the merits of the applications were not considered, at the second hearing I took over conduct of the proceeding, and will make a decision on the merits, below. Both parties were okay with proceeding in this manner, and took no issue.

At the initial hearing, the Tenant withdrew his application, in full. At the second hearing, on March 10, 2022, the Tenant confirmed he was still okay with withdrawing his application, and I advised his application would be dismissed, in full, with leave. Further, the Landlord understood and accepted that her application would be limited to the amount she laid out on her application, rather than the amount noted on her monetary order worksheet.

At the first hearing, both parties confirmed receipt of the evidence uploaded. Neither party took issue with the service of any of the documents at the second hearing and confirmed they had the documents. As such, I find the parties sufficiently served each other with all evidence provided to RTB.

Both the Landlord and the Tenant attended the second hearing on March 10, 2022, and provided affirmed testimony.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

### Background and Evidence

A copy of the Tenancy Agreement was provided into evidence, which shows that monthly rent was set at \$2,520.00, due on the first of the month. Internet (wifi access) was included under the tenancy agreement. The parties signed an addendum as follows:

Rent payment will be as follows:

1. April Rent will be prorated from the date of occupancy based on \$2520 for 30 days or \$84 per day. Assuming the suite is ready on April 8, 2021, the rent due on April 8, 2021 will be \$1932 for 23 days.
2. May Rent will be \$2520
3. June Rent will be \$2520
4. July Rent will be \$2520
5. August Rent will be \$2520
6. September Rent will be \$2520 discounted by \$150 per month for May/June/July/Aug and \$5 for each day occupied in April which would be \$115 if occupancy began on April 8, 2021, making September Rent  $\$2520 - \$715 = \$1805$ .
7. October Rent and every month from then forward will be \$2370 until such time as rent is increased as allowable under the BC Residential Tenancy Act.

The Landlord stated that rent was initially set at a higher amount, and then was reduced, in accordance with the above noted schedule. The Tenant did not dispute that

he agreed to the above noted rent schedule, and amounts. The Landlord confirmed that she still holds the Tenant's \$1,250.00 security deposit.

The Landlord applied for the following:

- 1) \$1,785.00 – September 2021 rent
- 2) \$2,350.00 – October 2021 rent

In total, the Landlord is seeking \$4,135.00 for the above two months rent. More specifically, the Landlord stated that the Tenant failed to pay any rent for September 2021, despite living in the rental unit until September 30, 2021. The Tenant confirmed he lived in the rental unit for this month, and acknowledged he did not pay rent for this month. The Tenant acknowledged directly that he is okay with paying the above noted amount for September rent, \$1,785.00, which includes a \$20.00 wifi discount because the Tenant's wifi was disconnected.

With respect to October rent, the Landlord stated that she was not given proper Notice from the Tenant that he would be moving out at the end of September. As such, when she saw the Tenant's moving truck on September 30, 2021, she was surprised. The Landlord stated that she returned on October 1, 2021, and saw the Tenant had abandoned the rental unit. The Landlord stated that she immediately started cleaning, and repairing the unit, and within a week, she was able to re-post the suite for rent at the same price. The Landlord stated that they had some interest, but were unable to re-rent the unit for October, due to the Tenant's inadequate Notice. The Landlord stated she re-rented the unit for December 1, 2021, but she is only seeking October rent on this application.

The Tenant stated that he told the Landlord, verbally, that he would be vacating the rental unit at the end of September, although he acknowledges that he never put any of this in writing. The Landlord denies that she was ever told he would be moving, formally.

- 3) \$1,121.40 – Flood damage (Leak inspection and repairs)

The Landlord stated that this rental unit is a carriage house, above a garage, located on their family property. The Landlord stated that on May 4, 2021, she was up early, and heard water running at an abnormal time. The Landlord stated that she went to the garage to investigate at around 5:00 am, and found there was water flooding out from the ceiling above (from the Tenant's carriage house). The Landlord stated that she immediately went up to try to tell the Tenant, but he would not answer his door. The

Landlord stated she could see that he was up, and for some reason, he was not answering or opening his door. The Landlord stated that she called for help at around 5:49 am, and the police and fire department arrived to assist. The Landlord stated that the police had to threaten to break the door down in order to gain access, as the Tenant had engaged a secondary lock inside the door.

The Landlord stated that when the police and fire department went inside, they found that the bathroom area was "wet" but did not give any specific details. The Landlord stated she did not enter the unit, as the police suggested she not. The Landlord stated that she hired an independent plumber to come to the rental unit on May 5, 2021, and he provided his professional opinion, as laid out of his invoice, that there was "no leak found in drainage or supply piping" and that water damage was likely due to spillage from upstairs Tenant. The invoice shows the Landlord paid \$168.00 for the leak inspection.

The Landlord also provided a copy of an invoice showing she paid \$953.40 to repair the ceiling damage from the flood. The Landlord also provided a copy of the police report, stating there was a plumbing issues in the bathroom area which may have been caused the leak. The police report noted that there was no obvious evidence of intentional property damage.

The Tenant stated that he has no idea where the water came from, and later denied seeing any water inside his rental unit. The Tenant generally referred to the fact that he has had issues with the toilets and sinks draining properly in the past. Although he was vague on these matters. The Tenant stated he was sleeping when he heard knocking on his door, and he did not wake up until the police were pounding on his door, trying to get in. The Tenant denies the leak was his fault, or that it even originated from within his suite.

#### 4) \$300.00 – Cleaning Costs

The Landlord stated that the Tenant failed to do any cleaning before he left. More specifically that Landlord stated that the blinds were dirty, the stove and appliances were dirty, the toilet was soiled and unclean, there were dead bugs in the window area, and the carpets were not cleaned. The Landlord provided a couple of photos which show a dirty toilet, some debris around the hood fan, a few building materials left behind, dirty bath tub, and blinds. The Landlord stated that she got a quote to have the unit cleaned as provided into evidence, for the above noted amount, but she didn't end up hiring this company. The Landlord stated that she had her in-laws come over to help

with cleaning. The Landlord did not provide any evidence to support that she paid any money for the cleaning, but testified that it took her and her in-laws a few hours to clean up.

The Tenant stated that the rental unit was dirty when he started living there, and the carpets were already stained. The Tenant stated he vacuumed, and did some cleaning before he left, so he does not feel he should have to pay any more, as it was left in a reasonably clean state.

### Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

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.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

The Landlord applied for the following:

- 1) \$1,785.00 – September 2021 rent
- 2) \$2,350.00 – October 2021 rent

Having reviewed the testimony and evidence on this matter, I find the Tenant owes September 2021 rent in the amount of \$1,785.00, as he agreed to owing this amount. Additionally, with respect to October rent, I find the Tenant is liable for this amount as he breached section 45(1) of the *Act*. I turn to section 45 of the *Act*:

Tenant's notice

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A Notice under this section must be in writing, and must comply with section 52 of the Act. I find the Tenant failed to give any Notice in writing, and he did not comply with form and content requirements for the Notice. I do not find the informal conversions are sufficient to end the tenancy under this section. The Tenant breached the Act, and caused the Landlord to incur losses. I find the Landlord sufficiently mitigated her losses for the month of October, as she reposted the suite a matter of days after it was abandoned. I find the Tenant is responsible for October rent, in full, which amounts to \$2,350.00, as per the Tenancy Agreement and the addendum.

3) \$1,121.40 – Flood damage (Leak inspection and repairs)

I have reviewed the testimony and evidence on this matter. I note the Landlord did not enter the rental unit at the time of the flood. However, she provided compelling testimony that she observed water pouring through the floor of the rental unit, into the garage, right before the police entered the unit. The police report shows they observed a water leak in the rental unit. Although it was non-specific. I note the Landlord hired an independent plumber to come and investigate the issue, and he gave his opinion that “no leak found in drainage or supply piping” and that water damage was likely due to spillage from upstairs Tenant. I have considered that the Tenant denies seeing any water, or that he caused the issue. However, I found his recollection of events to be somewhat scattered and vague.

I note the Tenant asserts there was no water in his unit, which contrasts with the Landlord’s version of events, that there was a large leak from the Tenant’s bathroom, which he left for many hours. When weighing these two versions of events, I find the Landlord has provided a more detailed and compelling explanation, and version of events, including supporting opinions of a plumber and documented flood issues in the police report. As such, I have placed more weight on the Landlord’s version of events, and I find it more likely than not that the water leak originated from the Tenant’s rental unit, and likely the bathroom area, given the water was flooding through the ceiling directly below the Tenant’s bathroom.

I also note the police indicated in their report that there was a leak in the rental unit. This is also consistent with the plumber's opinion, that the leak was due to spillage from the Tenant's appliances, not due to leaks in drains or supply pipes. Ultimately, I find it more likely than not that the water leak originated from within the rental unit, and that it was due to spillage. In the absence of an established, ongoing, and documented plumbing issues, I find this spillage is the responsibility of the Tenant as the damage was likely caused, or significantly contributed to, by the Tenant's use/misuse of the plumbing fixtures, rather than defective plumbing infrastructure.

Also, I note the only living space above the garage was the Tenant's rental unit, and it is unlikely that the source of the flood would be from another source.

I find the Landlord is entitled to the full amount of this item, \$1,121.40.

#### 4) \$300.00 – Cleaning Costs

I have reviewed the testimony and evidence on this matter. I find the photos taken at the end of the tenancy show that there were several items left in an unclean state. I find the Tenant failed to leave the rental unit vacant, and left behind some building materials. I also find the Tenant failed to sufficiently clean the toilet and shower grout lines. I find the Tenant has failed to leave the unit reasonably clean, contrary to section 37(2) of the Act. I find the Landlord is entitled to some compensation in this regard. However, I find the Landlord failed to sufficiently detail the amount of her loss, as she did not actually pay the above noted amount, nor did she clearly detail how many hours it took to clean.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I award a nominal award of \$50.00 for some cleaning labour, incurred by the Landlord, as I am satisfied that some cleaning would have been required due to the dirt left behind by the Tenant.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her

application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Total of items listed above	\$5,306.40
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,250.00)
<b>TOTAL:</b>	<b>\$4,156.40</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$4,156.40** as specified above. 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