



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$12,465 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenants confirmed, that the landlord served the tenants with the notice of dispute resolution package and supporting documentary evidence. The tenants testified, and the landlord confirmed, that the tenants served the landlord with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Inclusion of Tenant SP as a party**

The landlord named SP as a respondent to this application. SP is the stepmother of tenant JP. She stated that she was unsure why she was named as a party to this application, as she did not live in the rental unit. The landlord provided a copy of a tenancy agreement which listed SP as a tenant. However, this agreement was not signed by either JP or SP. The landlord stated that he included SP on the tenancy agreement as he wanted her to co-sign for JP. SP testified that she never agreed to be a co-signer for JP and that she never occupied the rental unit.

Based on the foregoing, I do not find that there is any basis to include SP as a party to this application. The tenancy agreement is not signed by SP and the landlord provided no documentary evidence which would suggest that SP agreed to co-sign with JP. As such, I order the application against her dismissed without leave to reapply.

Hereinafter I will refer to JP and "the tenant" and to SP by her initials.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$12,465;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The written tenancy agreement prepared by the landlord was never signed, so the tenancy agreement was verbal. Despite the unsigned written agreement indicating the start date of the tenancy as September 1, 2020, the tenant moved in on August 11, 2020. Monthly rent was \$1,200. The tenant paid the landlord a security deposit of \$600, which the landlord continues to hold in trust for the tenant.

The landlord testified that utilities were not included in the tenancy agreement whereas the tenant testified that the parties had agreed that they were.

The tenant vacated the rental unit on December 6, 2020. SP gave the landlord notice of the tenant's intention to vacate the rental unit on December 3, 2020 via email.

The landlord testified that the tenant moved into the rental unit prior to the agreed upon date of September 1, 2020, contrary to his wishes. The landlord testified that as a result of this, he did not have an opportunity to conduct a move in condition inspection report. He testified that the tenant changed the lock on the door and refused to give the landlord a copy of the key and told him that there is no need to do a move-in inspection. When the tenancy ended, the landlord testified that he contacted the tenant by phone and asked to do a move out inspection, but the tenant refused.

The tenant denied that he was not allowed to move into the rental unit on August 11, 2020. He stated that the landlord gave him a key to the rental unit, and that he moved in shortly thereafter. The tenant testified that during the tenancy, the landlord never gave 24 hours notice before entering the rental unit and on more than one occasion entered the rental unit without notice. As such, the tenant testified that he changed the lock on the rental unit to prevent such conduct. He denied that he refused to conduct a move-in inspection with the landlord.

The landlord testified that a non-profit agency paid monthly rent on the tenant's behalf for September and October 2020, but that he received no rent from either the tenant or this agency for November or December 2020. He seeks a monetary order for \$2,400 to reimburse him for the unpaid rent.

The tenant testified that he understood that the landlord had "all of this lined up" and that he told the tenant that he didn't have to worry about paying rent, as it would be taken care of by a non-profit agency. He testified that he had no idea that November and December's rent had not been paid.

The landlord argues that he was entitled to one month's notice of the tenant's intention to end the tenancy. He did not receive this. He says the earliest the tenant was entitled to end the tenancy by giving notice on December 3, 2020 was January 31, 2021. He seeks a monetary order of \$1,200 representing loss of income for January 2021.

The tenant testified that the landlord had represented that many things were going to be fixed in the rental unit once the tenancy started. He testified that his girlfriend (who was living with him in the rental unit) was pregnant and that she was having trouble walking up the exterior stairs to the rental unit as they were in disrepair. He testified that the landlord had represented that these would be repaired at the start of the tenancy, but they never were.

The tenant testified that on October 20, 2020, the toilet backed up and flooded parts of the rental unit and that the tenant could not get a hold of the landlord. He testified that the landlord never repaired the damage to the rental unit caused by this flood. He testified that, as the landlord failed to make repairs as he was obligated to make, the tenant decided to end the tenancy.

The landlord testified that prior to moving into the rental unit, the tenant collected \$700 from a friend of his on the pretext of adding him as a tenant. This friend stayed with the tenant in the rental unit for a short while, but was then required to leave by the landlord, as the landlord did not permit subletting of the rental unit. The landlord seeks a monetary order of \$700 so he can reimburse the tenant's friend the money that he paid the tenant. The landlord submitted a copy of statement made September 8, 2020 by the friend which states:

I [tenant's friend] hereby confirm that I paid [the tenant] a cash amount of \$700 on August 26, 2020 for the rent for the month of September 2020

I do now understand that what I did was not correct

Paying other than to the landlord is considered fraudulent and is a criminal offence

[as written]

The tenant denies collecting this amount from his friend in exchange for allowing him to stay at the rental unit.

The landlord testified that the tenant caused significant damage to the rental unit during the tenancy which took the landlord eight months to fully repair. The landlord testified that despite this, he was only seeking compensation of \$1,800 representing 1 1/2 months of lost income, because some of the delays in finishing the repairs due to challenges presented by the COVID-19 pandemic.

The landlord testified that the tenant punctured two holes in the vinyl deck which would require a heat weld patch to stop further water damage. He testified that water leaked in through these holes and caused water damage to the unit located below. He submitted an estimate to repair these damages of \$2,600. He did not submit any documentary evidence (such as photographs or videos) which showed this damage. He did not submit any documentary evidence showing the condition of the deck prior to the start of the tenancy.

The landlord testified that the tenant failed to clean the rental unit at the end of the tenancy and left a number of his belongings in it. He submitted photographs confirming this. He also alleged that the tenant damaged a wall in the rental unit. The landlord submitted a photo of damaged wall into evidence. The tenant admitted to not having cleaned the rental unit prior to vacating but denied causing the damage to the wall.

The landlord testified that the tenant damaged many of the items of furniture that were in the rental unit when the tenant moved in, including dining room chairs, a table, two couches, and an office chair. The tenant denied damaging any of the furniture. The landlord submitted photographs of the chairs and a couch which he alleged the tenant damaged. The tenant testified that the chairs in the photographs were not from the rental unit, but rather from his brother's unit downstairs. The tenant denied damaging the couches and testified that the coaches were damaged when the tenancy started.

The landlord did not provide any documentary evidence which set out the condition of the furniture at the start of the tenancy or the condition of the rental unit generally at the start of the tenancy. The landlord seeks monetary order of \$1,995 representing cleaning costs (\$270) and the replacement cost of the damaged furniture (\$1,725). He did not provide evidence (such as invoices, quotes, receipts, or advertisements) supporting these amounts.

The landlord claims that the tenant was responsible for paying 50% of the hydro bill for units two and three of the residential property (there are two other units in the residential property, which are on a separate hydro meter). He testified he applied monies he received from BC Housing on behalf of the tenant against the utility bills and that the tenant currently owes \$69.96 for unpaid utilities.

The landlord submitted a ledger into evidence showing charges and payments as follows:

Date	Owed	Paid	Balance	Description
11-Aug-20	\$812.90	\$0.00	\$812.90	Rent - 21 days
6-Oct-20	\$225.23	\$0.00	\$1,038.13	BC Hydro Aug 15 - Oct 2
6-Oct-20	\$0.00	\$900.00	\$138.13	Payment - BC Housing
29-Oct-20	\$0.00	\$450.00	-\$311.87	Payment - BC Housing
29-Oct-20	\$141.75	\$0.00	-\$170.12	Plumber - toilet - overflow
27-Nov-20	\$0.00	\$450.00	-\$620.12	Payment - BC Housing
6-Dec-20	\$690.08	\$0.00	\$69.96	BC Hydro Oct 3 to Dec 3
<b>Total</b>	<b>\$1,869.96</b>	<b>\$1,800.00</b>	<b>\$69.96</b>	

The landlord submitted two BC Hydro invoices for amounts equal to double the amounts the landlord alleges are owed by the tenant (as he says the tenant is responsible for 50% of the hydro bills). The non-profit who the landlord testified paid the tenant's rent for September and October 2020 is a different entity from BC Housing.

The tenant denied that he was obligated to pay utilities under the tenancy agreement. He understood that they were included in the monthly rent.

The landlord testified that the tenant returned to the residential property in April and May 2021 and moved in with his brother who occupied a different rental unit. He alleged without the tenant then broke into a storage area adjacent to his brother's rental unit and squatted there. The landlord asks for \$1,600 representing payment of rent for the tenants unauthorized stay in the storage area.

In summary, the landlord seeks a monetary order of \$12,354.69, representing the following:

Description	Amount
Money improperly collected by tenant from roommate	\$700.00
Arrears (Nov and Dec 2020)	\$2,400.00
Loss of income for January 2021 (insufficient notice)	\$1,200.00
Cost to repair rental unit	\$2,600.00
Loss of income for due to time needed to repair (1.5 months)	\$1,800.00
Cleaning costs and damaged furniture	\$1,995.00
Outstanding utilities	\$69.69
Rent for squatting in storage space (April and May 2021)	\$1,600.00
<b>Total</b>	<b>\$12,364.69</b>

## **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application.

As such, for each portion of the landlord's monetary claim, the landlord must prove it is more likely than not that the tenant breached the Act, that the landlord suffered a calculable monetary loss as a result of the breach, and that the landlord acted reasonably to minimize his loss.

#### **1. Improperly collected funds from tenant's friend**

The landlord seeks compensation in the amount of \$700 due to the tenant allegedly collecting this amount improperly from his friend. The Act does not govern relationships between a tenant and a perspective renter, roommate, or third party individual. It only governs the relationship between landlords and tenants. As such, the tenant cannot be said to have breached the Act by collecting this money from his friend.

In the alternative, if this action did constitute a breach of the Act, the landlord has not suffered any monetary loss as a result of the breach: it is the tenants friend who has

suffered the monetary loss and must therefore be the person to make a claim against the tenant. I dismiss this part of the application, without leave to reapply.

## 2. Arrears and Hydro

There is no written tenancy agreement signed by the parties. Additionally, there is no correspondence between the parties relating to the specific terms of the tenancy agreement.

As stated above, the landlord bears the evidentiary burden of proving what the terms of the tenancy agreement were. The parties agree that monthly rent was \$1200. They disagree as to whether or not the utilities were included. In the absence of documentary evidence which would support the landlord's claim that utilities were not included in the monthly rent, I find that the landlord has failed to discharge his evidentiary burden to prove they were included.

I accept that the landlord applied \$1,800 received from BC Housing on behalf of the tenant towards utility costs during the tenancy. However, I do not find that this is determinative of whether or not utilities were included, as the BC housing funds went directly to the landlord. This would accord with the tenant's testimony that he understood "all of this [i.e. payment of rent] lined up" prior to the start of the tenancy. I accept the tenant's testimony that he was not aware that he was in rental arrears for November and December, as he understood that the landlord was receiving funds directly for payment.

I find that the landlord received \$1,800 from BC Housing and that the landlord applied this amount towards utility costs. However, as I do not find that the landlord has established that he was entitled to charge the tenant for utilities, this amount cannot be applied to utilities payments. It must be applied to other amounts the tenant owes the landlord.

Additionally, the ledger submitted by the landlord indicates that he charged the tenant \$141.75 for the cost of calling a plumber to deal with the toilet overflow. There is no evidence that the tenant agreed to such a charge. The Act does not permit a landlord to unilaterally pass on the cost of such an expense to the tenant. Instead, the landlord must make an application to recover such an amount. As the landlord has not made an application to recover this cost, I do not find that he was entitled to charge this amount to the tenant's account.

As such, I do not find the calculations in the landlord's ledger to accurately reflect the amount owed by the tenant. Rather, I find that the \$1,800 from BC housing should be credited towards November and December 2020's rent. As such I find the tenant is \$600 in arrears for these months, and not \$2,400 as claimed by the landlord. I order the tenant to pay the landlord this amount. I dismiss the landlord's application to recover any amount for unpaid utilities, without leave to reapply.

### 3. Insufficient Notice

Section 45 of the Act, in part, states:

#### **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.

[...]

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I understand that the tenant ended the tenancy due to the landlord's failure to make the repairs requested in a timely manner. I am unsure if the failure to make these repairs amounted to a breach of a material term of the tenancy agreement. However, it is not necessary for me to make such a finding, as the tenant did not give the landlord written notice of his failure to comply with a material term of the tenancy agreement and set out a deadline by which he must make the requested repairs. As such, the tenant did not end the tenancy pursuant to section 45(3) of the Act.

Section 45(1) of the Act requires the tenant to give at least 30 days notice before ending a tenancy. Neither side gave any evidence as to what day of the month rent was due. However, in the absence of such evidence I find that monthly rent was due on the 1<sup>st</sup> of each month, as this is the almost universal standard for tenancy agreements. As such, the earliest the tenant could have ended the tenancy on December 3, 2020 would have been January 31, 2021. Accordingly, the tenant is responsible for paying the landlord January's rent. I order the tenant to pay the landlord \$1,200.

### 4. Damage to Rental Unit and Contents

The landlord failed to establish the condition of the rental unit or its contents at the start of the tenancy. A landlord usually does this by way of a move in condition inspection report. The landlord failed to do this. I do not accept the landlord's explanation for such a failure (the tenant changed the locks on the rental unit before one could be done). Were this the case, I would have expected correspondence from the landlord to the tenant demanding that the parties conduct a move in condition inspection report.

As such, and in light of the fact that the tenant denies causing any of the damage as alleged, I find that the landlord has failed to discharge his evidentiary burden to



establish that the tenant has damaged the rental unit and its contents as claimed. I dismiss these portions of the application.

The tenant admitted that he failed to clean the rental unit at the end of the tenancy. Section 37 of the act requires that a tenant leave the rental unit “reasonably clean” when they vacate. Based on the photographs submitted into evidence I find that he failed to do this. As such he breached the Act. The landlord seeks a monetary order of \$270 to reimburse him for cleaning costs. He did not provide any basis as to how he arrived at this amount. However, this amount is a reasonable amount to pay for the cleaning of a rental unit. I order the tenant to pay the landlord this amount.

As I have not found that the tenant caused any damage to the rental unit, the landlord is not entitled to compensation for loss of income for the time it took him to repair the damage. I dismiss this portion of the application as well.

#### 5. Compensation for April and May 2021

The tenant vacated the rental unit on December 6, 2020. Per section 44(1)(d) of the Act, the tenancy ended on that date. As such, when the tenant returned to the residential property in April 2021, the relationship between the tenant and the landlord was not governed by the tenancy agreement. The tenant would either be a visitor to, or a trespasser on, the residential property. Accordingly, the Act does not apply to any loss the landlord may have suffered as a result of the tenant’s actions in April or May 2021.

I dismiss this portion of the landlord’s application.

In summary, I ordered the tenant pay the landlord \$2,070 representing the following:

Description	Amount
Arrears (Nov and Dec 2020)	\$600.00
Loss of income for January 2021 (insufficient notice)	\$1,200.00
Cleaning	\$270.00
<b>Total</b>	<b>\$2,070.00</b>

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

As the tenant has mostly been successful in this application, I declined to order that he reimburse the landlord the filing fee.

#### Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,470, representing the following:

Description	Amount
Arrears (Nov and Dec 2020)	\$600.00
Loss of income for January 2021 (insufficient notice)	\$1,200.00
Cleaning	\$270.00
Security deposit credit	-\$600.00
<b>Total</b>	<b>\$1,470.00</b>

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: April 7, 2022

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Residential Tenancy Branch