



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding S.K. NELSON DEVELOPMENTS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on December 20, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in November of 2021 was sent to the Tenant, via email. The Landlord submitted documentation that corroborates this testimony. I find that these documents have been served as authorized by a Residential Tenancy Branch Arbitrator on December 17, 2021, that this hearing should proceed in the absence of the Tenant, and that the evidence is accepted for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed that she would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent/lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on August 01, 2018;
- the Tenant gave notice to end the tenancy, effective September 30, 2021;
- the rental unit was vacated on October 03, 2021;
- the monthly rent was \$1,500.00; and
- the Tenant paid a security deposit of \$750.00.

The Landlord is seeking compensation, in the amount of \$900.00, for cleaning the rental unit and \$3,878.18 for disposing of property left by the Tenant at the end of the tenancy. The Landlord submitted photographs, which the Agent for the Landlord stated were taken on October 03, 2021, which show the rental unit required cleaning and that a large amount of personal property was left at the rental unit. The Landlord submitted invoices to show that the Landlord incurred these expenses.

The Landlord submitted an invoice from individuals with the initials “KB” and “AR”, which indicates they spent 12 hours making various repairs. The Agent for the Landlord stated that 2 of these hours were spent assisting with removing personal property.

The Landlord is seeking compensation, for repairing walls, doors, cabinets and trim, and for painting the rental unit. The Agent for the Landlord stated these areas need to be repaired/painted because there were holes in the walls from hanging paintings and the walls/doors/trim were damaged from being hit, likely with furniture.

The Landlord submitted an invoice from the Agent for the Landlord, which indicates the Agent for the Landlord spent 90 hours making various repairs. The Agent for the Landlord stated that she spent approximately 50 of these hours repairing walls/door/trim and painting the entire unit.

The Landlord is seeking compensation, for yard maintenance. The Agent for the Landlord stated this included mowing the lawn, trimming bushes, and repairing flower beds. The Agent for the Landlord stated that there is nothing in the tenancy agreement

that specifies the Tenant's responsibility regarding yard maintenance, this was a single family dwelling and there was an expectation that the yard would be maintained.

The Landlord submitted an invoice from the Agent for the Landlord, which indicates the Agent for the Landlord spent 90 hours making various repairs. The Agent for the Landlord stated that she spent approximately 36 of these hours maintaining the yard.

The Landlord is seeking compensation for time spent ordering and replacing appliances. The Agent for the Landlord stated that the refrigerator and stove were so dirty they needed to be replaced. The Landlord submitted an invoice from the Agent for the Landlord, which indicates the Agent for the Landlord spent 90 hours making various repairs. The Agent for the Landlord stated that she spent approximately 4 of these hours replacing the appliances.

The Landlord is seeking compensation for repairing two gates. The Landlord submitted an invoice from individuals with the initials "KB" and "AR", which indicates they spent 12 hours making various repairs. The Agent for the Landlord stated that 9 of these hours were spent repairing and painting a garden gate which was damaged during the tenancy.

The Landlord is seeking compensation of \$112.99 for costs from a local hardware store. The Agent for the Landlord stated that she is not certain, but she believes this was for supplies used to repair the gate. The Landlord submitted a hardware receipt, in the amount of \$135.58, for various items typically used to repair a gate.

The Landlord is seeking compensation for replacing locks, as not all of the keys to the rental unit were returned. The Landlord submitted an invoice from individuals with the initials "KB" and "AR", which indicates they spent 12 hours making various repairs. The Agent for the Landlord stated that 1 of these hours was spent changing the locks.

The Landlord is seeking compensation, in the amount of \$488.72, for security services. The Agent for the Landlord stated that the bylaw office informed the Landlord that "homeless" people were stealing items the Tenant had left in the yard at the end of the tenancy and were using it on the street. She stated that the security services were hired to ensure the Tenant's items were not left on the street, as the Landlord did not "want problems" with the bylaws office.

The Landlord is seeking compensation for unpaid rent from September of 2021, in the amount of \$1,500.00. The Agent for the Landlord stated that rent for September was not received.

The Landlord is seeking compensation for lost revenue for ½ of October of 2021, as they were unable to re-rent the unit due to the condition in which it was left. The Agent for the Landlord stated that the unit was re-rented on October 21, 2021.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and 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.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit and removing personal property, which was \$4,778.18, which includes the \$900.00 paid to the Agent for the Landlord, \$60.00 paid to the individuals with the initials “KB” and “AR”, and \$3,878.18 to the removal company.

I find that the Landlord submitted insufficient evidence to establish that the walls/doors/trim was damaged beyond what is typically considered reasonable wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, which allow me to independently assess the extent of the damage. When supporting evidence, such as photographs, is reasonably available, I find that such evidence is required, particularly in circumstances when the extent of the

damage is subjective. Although the Agent for the Landlord described the areas as being scraped and that there were holes in the wall from hanging pictures, I find that such damage is common and can constitute normal wear and tear.

As the Landlord submitted insufficient evidence to establish that the walls/door/trim was damaged beyond reasonable wear and tear, I dismiss the claim for repairing and painting those areas.

Residential Tenancy Branch Policy Guideline #1, with which I concur, suggests that a tenant of a single-family dwelling is responsible for routine yard maintenance, which includes cutting the grass. On the basis of the photographs submitted in evidence, I find that the lawn was not particularly long on October 03, 2021. The guideline further suggests that a tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. As the Agent for the Landlord advised there is nothing in the tenancy agreement that requires the Tenant to maintain flower beds, I cannot conclude that the Tenant was responsible for anything other than mowing the lawn.

As the Landlord has failed to establish that the lawn was in significant need of mowing and that the Tenant was responsible for any yard maintenance beyond mowing the lawn, I dismiss the Landlord's claim for yard maintenance.

I find that the Landlord has submitted insufficient evidence to establish that the refrigerator or the stove needed replacing. Although the Landlord submitted a photograph of a refrigerator full of food, I cannot conclude that the need to clean that refrigerator rendered the appliance unusable. The Landlord did not submit a photograph of the condition of the stove and I therefore find that the Landlord has failed to establish that the stove was incapable of being cleaned.

As the Landlord has submitted insufficient evidence to establish appliances needed replacing, I dismiss the claim for time spent replacing those items.

On the basis of the testimony of the Agent for the Landlord and the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair a gate that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the gate, which was \$112.99 for materials and \$270.00 for labor. (9 hours X \$30.00).

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to return all of the keys to the unit. I therefore find that the Landlord is entitled to compensation for the cost of replacing the locks, which was \$30.00. (1 hour X \$30.00).

I find that the Landlord has failed to establish that hiring security services to protect the Tenants' personal items, which the Landlord subsequently discarded, was a reasonable expense. In reaching this conclusion I was influenced by the absence of any evidence to show that there is a bylaw in the community that would subject a property owner to a fine if the property owner did not prevent a third party from committing theft. As the Landlord has failed to establish the reasonableness of this expense, I dismiss the Landlord's claim for security costs.

Section 26 of the *Act* requires tenants to pay rent when it is due. On the basis of the undisputed evidence, I find that the Tenant failed to pay the required rent of \$1,500.00 on September 01, 2021. As such, I find that the Tenant owes \$1,500.00 in rent.

I find that the Tenant left the rental unit in a condition that prevented the Landlord from re-renting the unit for the first two weeks of October of 2021. I therefore grant the Landlord's application for lost revenue for those two weeks, in the amount of \$750.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$7,601.17, which includes \$4,838.18 for cleaning/disposing of property; \$382.99 for repairing a gate, \$30.00 for replacing locks, \$1,500.00 in unpaid rent; \$750.00 for lost revenue from October of 2021; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$750.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$6,851.17. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: June 24, 2022

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Residential Tenancy Branch