



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:50 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She stated that she had permission to represent the landlord named in this application, at this hearing. She provided her email address for me to send this decision to the landlord after the hearing. She confirmed that the landlord owns the rental unit and provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure (“Rules”)* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord’s agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord’s agent. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests. She confirmed that she wanted to pursue the landlord’s application at this hearing.

The landlord’s agent testified that she served a copy of the landlord’s application for dispute resolution hearing package to the tenant on November 19, 2021, by way of registered mail to the forwarding address provided by the tenant in a letter, dated September 22, 2021. She said that she provided a copy of the above letter with this application. She claimed that she did not check the Canada Post tracking number or provide a copy of the tracking report with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application on November 24, 2021, five days after its registered mailing, to the tenant’s forwarding address provided by the tenant on September 22, 2021.

Preliminary Issue – Inappropriate Behaviour by the Landlord’s Agent during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of this hearing, I asked the landlord’s agent if she could move to a quieter area because I had difficulty hearing her with birds loudly chirping in the background. She stated that she had birds there with her and she would move them away to reduce the noise.

Throughout this hearing, the landlord’s agent repeatedly interrupted me and argued with me. She repeatedly laughed and asked if this hearing was a “game.” I informed her that this hearing was not a game but a legal proceeding. I notified her that the landlord filed this application and requested this hearing on his own accord. I informed her that I was required to ask questions about service and this tenancy, in order to make a

decision regarding the landlord's application. I informed her that the tenant did not attend this hearing so I could not ask the tenant any questions about service or this tenancy.

During this hearing, I cautioned the landlord's agent regarding her above inappropriate behaviour. However, I allowed her to attend the full hearing, despite her inappropriate behaviour, in order to allow her to present the landlord's application.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent stated the following facts. This tenancy began on August 1, 2018 and ended on October 26, 2021. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$700.00 was payable on the first day of each month. The tenant paid a security deposit of \$350.00 and a pet damage deposit of \$350.00 and the landlord continues to retain both deposits. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant was not present for the move-out condition inspection. The landlord did not have written permission to retain any amount from the tenant's deposits. The landlord received a written forwarding address from the tenant on September 22, 2021, by way of a letter. The landlord's application to retain the tenant's deposits was filed on November 10, 2021.

The landlord's agent testified regarding the following facts. October rent was not paid, which is due on the first of the month. The tenant gave a 30-day notice on September 22, to vacate. There was a water leak on September 25. The landlord never heard from the tenant and she moved out. There were damages to the suite downstairs from

the water leak. This is a fourplex, where the tenant was living in the upper unit. The tenant repeatedly missed appointments with the landlord on September 26, 27, 28, and 29. The landlord finally got into the rental unit on October 1. The landlord had to replace the tile downstairs and provided a receipt. The landlord had to clean the rental unit and provided pictures. The tenant left items in the rental unit and the landlord had to send it to the forwarding address. The landlord is seeking rent, to retain the tenant's deposits, and damages.

## Analysis

### Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove his application and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlord to provide evidence of his claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord's agent testified that she served this application package to the tenant, as required. During this hearing, the landlord's agent referenced a document entitled "Notice of Dispute Resolution Proceeding," dated November 18, 2021 ("NODRP"). She said that she had this document in front of her during this hearing. This document also contains the phone number and access code to call into the hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*

- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed the landlord's agent that I had 30 days to issue a decision in writing to the landlord.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of his claims, since he chose to file his application on his own accord. During this hearing, I informed the landlord's agent that the landlord chose to file this application on his own accord.

#### *Legislation, Policy Guidelines, and Rules*

The following RTB *Rules* are applicable and state the following, in part:

##### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

##### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

##### *7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

#### *C. COMPENSATION*

*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.*

...

#### *D. AMOUNT OF COMPENSATION*

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that the landlord's agent did not properly present the landlord's evidence, as required by Rule 7.4 of the *RTB Rules of Procedure*, despite having multiple

opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*.

This hearing lasted 20 minutes so the landlord's agent had ample opportunity to present the landlord's application, as the tenant did not attend. During this hearing, I asked the landlord's agent if she had any other information to present and provided her with multiple opportunities for same. During this hearing, the landlord's agent repeatedly stated that she repeatedly checked her notes, and she had no other information to present regarding the landlord's application.

### Rent

On a balance of probabilities and for the reasons stated below, I make the following findings.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord is entitled to \$700.00 total in unpaid rent from the tenant. The landlord's agent provided undisputed, affirmed testimony that the tenant failed to pay rent to the landlord for October 2021. The landlord's agent provided undisputed, affirmed testimony that the rent was \$700.00, due on the first day of each month. The landlord provided a signed, written tenancy agreement that rent of \$700.00 was due on the first day of each month for this month-to-month tenancy.

Although the landlord's agent stated that this tenancy ended on October 26, 2021, I find that rent is due on the first day of each month. The tenant's 30-day notice to vacate, dated September 22, 2021, states that the tenant will move out by October 31, 2021. The tenant is required to provide at least one month's notice to end a month-to-month tenancy as per section 45(1) of the *Act*. Therefore, I find that the tenant owes rent to the landlord for the entire month from October 1 to 31, 2021, even if her tenancy ended earlier on October 26, 2021.

The landlord continues to hold the tenant's security deposit of \$350.00 and pet damage deposit of \$350.00. No interest is payable on the tenant's deposits during this tenancy.

This tenancy ended on October 26, 2021. The landlord received a written forwarding address on September 22, 2021. The landlord did not have any written permission to keep any part of the tenant's deposits. The landlord filed this application to retain the tenant's deposits on November 10, 2021, which is within 15 days of the tenancy end date of October 26, 2021. Therefore, I find that the tenant is not entitled to the return of double the value of her deposits from the landlord.

The landlord applied to retain the tenant's deposits in this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$350.00 and pet damage deposit of \$350.00, totalling \$700.00, in full satisfaction of the monetary award for the unpaid rent of \$700.00 for October 2021.

### Other Costs

The landlord's application for damages, cleaning, and other costs, totalling \$721.19 is dismissed without leave to reapply. This includes \$11.19 for "ceiling tile," \$100.00 for "trailer/truck hrs," \$300.00 for "cleaning hrs," \$50.00 for "water leak inspection," \$30.00 for "inspection not completed," \$150.00 for "maintenance repair hours," \$30.00 for "inspection uncomplete," and \$50.00 for "inspection completed."

The above amounts and claims have been taken from the landlord's monetary order worksheet submitted with the landlord's application. The landlord's agent did not provide any of the above specific amounts or review the landlord's monetary order worksheet during this hearing.

The landlord's agent did not explain the landlord's claims or review the landlord's documents in sufficient detail during this hearing. She mentioned providing receipts and photographs as evidence for this hearing, but she did not review them in detail, during this hearing. She did not indicate any specific amounts for cleaning, damages, or other costs during this hearing. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

I find that the landlord's agent failed to provide sufficient evidence of cleaning or damages beyond reasonable wear and tear, caused by the tenant, as per Residential Tenancy Policy Guideline 1. The landlord's agent did not review the move-in or move-out condition inspection reports that were provided for this hearing.



During this hearing, the landlord's agent did not testify about the following information: when the landlord had any damages repaired, when the work was completed, who completed it, how many people completed it, what the rate per hour or per worker was, what tasks were completed, how long it took to complete, when the work was paid for, how it was paid, and who paid it.

As the landlord was only partially successful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I order the landlord to retain the tenant's security deposit of \$350.00 and pet damage deposit of \$350.00, totalling \$700.00, in full satisfaction of the monetary award.

The remainder of the landlord's application is dismissed without leave to reapply.

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: June 06, 2022

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Residential Tenancy Branch