



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord filed an amendment to the above claim on July 8, 2022 (the "First Amendment") which increased the quantum sought from \$650.00 to \$945.05.

The landlord filed a second amendment (the "Second Amendment") on July 11, 2022 which increased the quantum sought from \$945.05 to \$1,024.21.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:32 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed her email addresses for service of this decision.

### Preliminary Issue- Service

The landlord testified that the tenant was served with the landlord's application for dispute resolution via registered mail on December 30, 2021. The landlord entered into evidence a registered mail customer receipt to prove the above mailing. I find that the tenant was served in accordance with section 89 of the *Act*.

The landlord testified that the tenant was personally served with the First Amendment on July 8, 2022 and that her son witnessed the service. The landlord's son testified that he witnessed his mother personally serve evidence on the tenant but was unsure if it was on July 8, 2022 and was unsure specifically what documents were served.

The landlord testified that she did not have everything ready on July 8, 2022 and the Service BC agent told her that no more evidence could be processed that day so she filed the First Amendment and took amendment forms provided by the Service BC worker home to complete.

The landlord testified that she post dated the Second Amendment to July 11, 2022, a Monday, when the amendment and additional evidence could be processed. The landlord testified that the Second Amendment, though dated July 11, 2022, was actually completed on July 8, 2022 and was personally served on the tenant on July 8, 2022. The landlord testified that she filed the Second Amendment on July 11, 2022.

I accept the landlord's undisputed evidence that the tenant was personally served with the First and Second Amendments, in accordance with section 88 of the *Act*.

The landlord testified that her evidence was served on the tenant via registered mail on July 8, 2022. A registered mail receipt stating same was entered into evidence. I find that the tenant was deemed served with the landlord's evidence on July 13, 2022, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) states:

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The tenant uploaded evidence; however, did not attend to present it. I decline to consider evidence that was not presented, in accordance with Rule 7.4 of the *Rules*.

### **Issues to be Decided**

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant’s security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord’s 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 provided the following undisputed testimony. This tenancy began on February 28, 2021. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant to the landlord. The landlord has not returned any portion of the security deposit to the tenant.

The landlord testified that the tenant did not provide a forwarding address in writing to the landlord. The landlord testified that the tenant moved nearby, and the landlord has seen the tenant’s car and knows where she currently lives. The landlord entered into

evidence a messenger conversation between the landlord and the tenant in which the tenant provided the landlord with her forwarding address on December 6, 2021.

The landlord's application for dispute resolution and amendments seek the following damages arising from this tenancy:

<b>Item</b>	<b>Amount</b>
Hearing preparation costs including costs for photocopying, mailing, printing photographs, purchasing tape to post documents on tenant's door, and hours taken to prepare for hearing.	\$209.43
Cleaning	\$237.50
Unpaid hydro	\$574.28
Cost of garbage tags	\$3.00
<b>Total</b>	<b>\$1,024.21</b>

#### Hearing preparation Costs

The landlord entered into evidence receipts for photocopying, mailing, printing photographs and purchasing tape for the purpose of posting documents totalling \$109.43.

The landlord testified that the above costs were all incurred in preparation for this hearing. The landlord testified that she is also seeking \$100.00 for time spent preparing for this hearing.

#### Cleaning

The landlord testified that she completed a move in condition inspection report with the tenant on March 1, 2021. The landlord entered into evidence a move in condition inspection report signed by both the landlord and the tenant. The move in condition inspection report does not note any area of the subject rental property being dirty.

The landlord testified that the tenant originally agreed to complete a move out condition inspection report with the landlord shortly after she moved out but failed to attend. The landlord testified that she then posted RTB Form 22, Notice of Final Opportunity to Schedule a Condition Inspection on the tenant's door. The landlord testified that she proposed a condition inspection on December 23, 2021 "or any other day you arrange".

The landlord testified that the tenant did not attend on December 23, 2021 or arrange another day for the inspection.

The landlord testified that she completed the move out condition inspection without the tenant on February 8, 2022. The landlord testified that no-one moved into the subject rental property between the time the tenant moved out and the completion of the move out condition inspection report. The landlord testified that she had a witness attend the move out condition inspection. The witness signed the move out condition inspection report.

The landlord testified that she waited until February 2022 to complete the report because she was hoping the tenant would attend the move out condition inspection and clean the subject rental property. The move out condition inspection report states that all rooms in the subject rental property were left dirty. The landlord testified that the tenant did not clean the windows, the windowsills, behind the stove and fridge, which were on rollers, the carpets, the stove, the kitchen, the fridge and many other areas. Photographs showing dirt/mould in the above were entered into evidence. The landlord testified that the tenant's hair was located everywhere. Many photographs showing hair were entered into evidence.

The landlord testified that she cleaned for more than 5.5 hours but is only seeking compensation for 5.5 hours of cleaning at a rate of \$25.00 per hour. The landlord testified that her son cleaned for four hours and that she is seeking compensation for his labour at a rate of \$25.00 per hour. The total claim for cleaning is \$237.50.

#### Hydro electricity charges

A written tenancy agreement was not entered into evidence. The landlord testified that the subject rental property is a carriage house and that she resides in the main house.

The landlord testified that both the carriage house and the main house are under a single hydro account and that she receives one bill for both properties. The landlord testified that she had a meter installed on the carriage house to measure usage and that the tenant agreed to pay for her hydro consumption based on that meter.

The landlord entered into evidence a facebook message dated 2/4/21 in which the tenant asks the landlord if she should set up her own hydro account and the landlord

responds that she has a meter to read the electricity consumption and that she takes the reading and does the calculation to determine what the tenant owes.

The landlord entered into evidence BC Hydro invoices for the following periods:

- November 4, 2020 to January 5, 2021 in the amount of \$489.70,
- January 6, 2021 to March 5, 2021 in the amount of \$581.26,
- March 6, 2021 to May 5, 2021 in the amount of \$439.45,
- May 6, 2021 to July 6, 2021 in the amount of \$269.65, and
- September 4, 2021 to November 4, 2021 in the amount of \$333.45.

The landlord testified that she is seeking unpaid utilities from July 6, 2021 to November 30, 2021. The landlord testified that between July 6, 2021 and November 30, 2021 the tenant used 3,747 kilowatt hours of electricity and that she is seeking \$574.28 for that use. The landlord did not provide any documentary evidence to prove the amount of electricity used by the tenant.

The landlord testified that the rate charged by BC Hydro per kilowatt hour is .1408 and so she multiplied the kilowatt hours used by the tenant (3,747) by .1408 which totals \$537.58 (the tenant's electricity costs). The September 4, 2021 to November 4, 2021 BC Hydro bill states that step 1 electricity charges are at a rate of \$0.0939/ kWh, Step 2 electricity charges are at a higher rate of \$0.1408 /kWh and EPLUS electricity charges are at a rate of \$0.0858 /kWh. The invoice states that 1,376 kWh were billed at the step 1 rate, 799 kWh were billed at the Step 2 rate and 734 kWh were billed at the EPLUS rate.

The landlord testified that \$19.35 in basic charges were charged between July 6, 2021 and November 30, 2021. The September 4, 2021 to November 4, 2021 invoice charges a basic charge of \$12.88. The landlord testified that she added the tenant's electricity costs (\$537.58) with the basic charges (\$19.35) which totals \$546.93. How the basic charge claim of \$19.35 was calculated is not clear and the landlord did not provide testimony on this point. The landlord testified that 5% GST was added to the above sum resulting in the total claim of \$574.28. The September 4, 2021 to November 4, 2021 invoice charges 5% GST.

#### Garbage tags

The landlord testified that the tenant used the landlord's garbage tags for her garbage, but did not pay the landlord back and owes the landlord \$3.00. The landlord entered into

evidence a note the landlord testified was written by the tenant which states:

For garbage tags:  
I sill owe you \$3  
Need to get change!

The above note was not signed.

## **Analysis**

### **Damages**

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

### Hearing preparation costs

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act, tenancy agreement or Regulation. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in or preparing for the dispute resolution process. I therefore dismiss the landlord's claim for all hearing preparation costs, without leave to reapply.

### Security Deposit

Based on the undisputed testimony of the landlord and the move in condition inspection report entered into evidence, I find that the landlord completed a move in condition inspection report with the tenant in accordance with section 23 of the *Act*.

Section 35 of the *Act* states:

- 35** (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a)on or after the day the tenant ceases to occupy the rental unit, or
  - (b)on another mutually agreed day.
- (2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3)The landlord must complete a condition inspection report in accordance with the regulations.
- (4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5)The landlord may make the inspection and complete and sign the report without the tenant if
- (a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b)the tenant has abandoned the rental unit.



Section 17 of the Residential Tenancy Act Regulation (the “Regulation”) states:

- 17** (1)A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2)If the tenant is not available at a time offered under subsection (1),
- (a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3)When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I accept the landlord's undisputed testimony that the tenant agreed to complete a move out condition inspection at the subject rental property shortly after the tenant moved out but failed to attend. Based on the RTB Form #22 entered into evidence and the landlord's undisputed testimony, I find that the landlord posted RTB Form #22 on the tenant's door and the tenant failed to attend the proposed December 23, 2021 inspection and failed to propose a different date and time for the move out condition inspection to be completed. I accept the landlord's undisputed testimony that she and a witness completed the move out condition inspection report without the tenant on February 8, 2022. Pursuant to my above findings, I find that the landlord completed the move out condition inspection and report in accordance with section 35 of the *Act* and section 17 of the Regulation.

Section 14 of the Regulation states:

The landlord and tenant must complete a condition inspection described in section 23 or 35 of the *Act* [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Based on the landlord's undisputed testimony, I find that the move out condition inspection occurred after the tenant moved out and before another tenant moved in and was empty of possessions, in accordance with section 14 of the Regulation.

Section 36 of the *Act* states:

**36** (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b)the tenant has not participated on either occasion.

I find that the landlord complied with section 35(2) of the *Act*, by providing the tenant with two opportunities to complete the move out condition inspection and report and that the tenant did not participate on either occasion. Pursuant to section 36 of the *Act*, I find that the tenant's right to the return of the security deposit is extinguished for failure to attend the move out condition inspection.

Section 21 of the Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the condition inspection report was completed in accordance with the Regulation, and no contrary evidence was presented at the hearing, pursuant to section 21 of the Regulation, I find that the move in and out condition inspection reports are evidence of the state of repair and the condition of the rental unit on the date of the inspections.

### Cleaning

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

Based on the undisputed testimony of the landlord, the move in and out condition inspection reports and the photographs entered into evidence, I find that the subject

rental property was clean on move in and dirty in all rooms on move out, contrary to section 37(2)(a) of the *Act*.

I accept the landlord's undisputed testimony that she cleaned the subject rental property for at least 5.5 hours and that her son cleaned for 4 hours. I find the claimed rate for cleaning, that being \$25.00 per hour to be reasonable. I find that the landlord has proved that the tenant's breach of section 37(2)(a) of the *Act* resulted in a loss to the landlord in the amount of \$237.50. I award the landlord \$237.50 for labour to clean the subject rental property. I find that no mitigation issues were raised in the hearing.

#### Hydro electricity charges

The landlord did not enter for consideration any documentary evidence to establish that the tenant used 3,747 kWh of electricity between July 6, 2021 and November 30, 2021. I find that the landlord has not proved the value of the loss claimed, and pursuant to PG #16 and section 67 of the *Act*, the landlord's claim for hydro costs fails and is dismissed without leave to reapply.

I note that only one of the hydro invoices entered into evidence was for the claimed period and that the rate of charge on the invoices was charged in steps and that the landlord is seeking the tenant to pay her entire alleged portion at the higher step rate. The above issues were not addressed by the landlord in the hearing and further question the veracity of the landlord's claim.

#### Garbage tags

The IOU note entered into evidence is not signed by the tenant. I find that the landlord has not proved, on a balance of probabilities, that the tenant wrote it or owed \$3.00 for garbage tags. The landlord's claim for garbage tags is therefore dismissed without leave to reapply.

#### Filing fee and set off

As the landlord was successful in portions of this claim, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, in accordance with

section 72 of the *Act*.

Residential Tenancy Branch Policy Guideline #17 (PG #17) states:

In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 [consequences for tenant and landlord if report requirements not met] of the *Act*, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the *Act*.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

The total sum awarded to the landlord in this application for dispute resolution is \$337.50, which is less than the security deposit. Pursuant to PG #17 and section 36 of the *Act*, I find that the landlord is entitled to retain the entire deposit as the tenant has forfeited its return.

### **Conclusion**

The landlord is entitled to retain the tenant's security deposit in the amount of \$650.00.

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: July 29, 2022

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Residential Tenancy Branch