



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

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

### Introduction

The landlord seeks compensation against their former tenant pursuant to sections 67 and 762 of the *Residential Tenancy Act* ("Act").

An arbitration hearing was convened on August 25, 2022. The landlord and a witness for the landlord attended. They were both affirmed. The hearing began at 1:30 PM and ended at 2:05 PM. At no point during the hearing did the tenant attend.

The landlord testified under oath that she served the *Notice of Dispute Resolution Proceeding* on the tenant by way of email (for which the tenant agreed was an acceptable means of service of documents, and for which documentary evidence of this agreement was provided) on or about January 26, 2022. Based on this undisputed evidence I am satisfied that the tenant was served the required documentation necessary for him to fully participate in the dispute resolution process.

### Issue

Is the landlord entitled to compensation?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began December 20, 2020 and ended January 16, 2022. Rent was \$1,650.00 and the tenant paid a \$825.00 security deposit and a \$200.00 pet damage deposit. The deposits are currently held in trust pending the outcome of this application. There is a copy of a written tenancy agreement in evidence.

The landlord seeks compensation for, as listed in the monetary order worksheet:

#1	Highlander Forming Ltd. - 2 days	Contracted service	\$955.50
#2	JSD Contracting services - 1 week	Contractor, Construction	\$1,058.75
#3	Saniata Cleaning & House keeping - 3 days	Carpet, couch cleaning, Kitchen	\$890.78
#4	better lock group & quattro strata	keys and fobs	\$196.90
#5	Fast Lock Smith	Re key door	\$210.00
#6	Black Diamond Mechanical	Garburator removal, repipe	\$130.00
#7	canadian tire, home depot, rona, walmart	supplies, replacement items	\$1,666.34
#8	coquitlam transfer station	disposal - mattress, garbag	\$45.00
#9	Hydro Bills - 2020 vs 2021, mRent & hydro	Rent & fees Owed, Hydro C	\$1,471.71
#10	@ age contract Addendums	\$150 charge for 2 people in	\$1,800.00
<b>Total monetary order claim</b>			<b>\$8,425.11</b>

The landlord testified under oath that the submitted Condition Inspection Report, completed at the start and at the end of the tenancy, and that the report accurately and truthfully reflects the condition of the rental unit at the start and end of the tenancy. The landlord further testified that the colour photographs submitted of the interior and exterior of the rental unit accurately reflected the condition of the property at the end of the tenancy.

Copies of the condition in step action report and rental unit inventory and several photographs were submitted into evidence. Copies of invoices and receipts for expenses related to repairing the rental unit were tendered into evidence.

The landlord testified that the addendum to the tenancy agreement required that the tenant pay a \$150 charge if more than one person resided in the rental unit. While he indicated that he was the only one who would be living there, it was soon discovered that his girlfriend and a small child were residing with him during the entire 12-month tenancy. The landlord seeks \$1,800 as a result.

Landlord seeks \$880.00 for unpaid rent. The tenant was late paying rent in June, September, and January, and the landlord seeks late rent fees. While the tenancy agreement noted late rent fees of \$80, this amount has been reduced to \$25 per late rent, as per the legislation. A total of \$75 in late rent fees is therefore sought. The tenant agreed, by way of text message dated April 2021, that he would be responsible for paying any overage in the hydro over above \$90. At the end of the tenancy the tenant owed \$161.71 for excessive, or overage, hydro use.

### Analysis

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.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. This includes any amounts that a tenant is obligated to pay for utilities.

Taking into consideration all of the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to compensation in the amount of \$1,041.71 for unpaid rent and utilities.

Section 7 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 (the “Regulation”) authorizes a landlord to charge certain types of non-refundable fees. Subsections 7(1)(d) and 7(2) of the Regulation permit a landlord to charge an administrative fee of not more than \$25.00 for late payment of rent.

Taking into consideration all of the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the tenant was late paying rent three times and thus the landlord is entitled to compensation in the amount of \$75.00 for late payment fees.

Sections 13(2)(f)(iv) and 40(b) of the Act permit a landlord to vary the rent with the number of occupants. In this case, the addendum to the tenancy agreement clearly states that there is “an additional charge of \$150” that would be added to the monthly if two people reside in the rental unit. While the landlord refers to this as a “charge,” it is essentially synonymous with a rent increase as contemplated and permitted under sections 13(2)(f)(iv) and 40(b) of the Act.

Taking into consideration all of the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that there were three, not one, occupants. As such, the landlord is entitled to receive the additional \$150.00 in rent for which the tenant chose not to pay. The landlord is therefore entitled to \$1,800.00 in compensation for the additional occupant rent.

Section 37(2)(a) of the Act states that

- (2) When a tenant vacates a rental unit, the tenant must
  - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) 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.

In this dispute, the condition inspection report, combined with the numerous colour photographs, and the landlord's sworn testimony, persuade me to find that the tenant breached section 37(2)(a) of the Act by not leaving the rental unit reasonably clean and undamaged. There is not an inkling of doubt that the filth and damage depicted in the photographs and described in the condition inspection report vastly exceed reasonable wear and tear. And, that the tenant did not return the keys and means of access (the fob) to the landlord in a manner that rendered them useful.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to compensation for the numerous damages and repairs caused by the tenant. The landlord is entitled to \$5,153.27 in compensation.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, the landlord was successful in her application, so the tenant is ordered to pay the landlord \$100.00.

In total, the landlord is awarded \$8,169.98.00 in compensation.

Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain the tenant's security and pet damage deposits totalling \$1,025.00 in partial satisfaction of the above-granted award.

Pursuant to section 67 of the Act the tenant is hereby ordered to pay to the landlord \$7,144.98. If the tenant refuses to, or does not, pay this amount then the landlord must (1) serve a copy of the monetary order upon the tenant, and (2) enforce the monetary order in the Provincial Court of British Columbia. A copy of the monetary order is issued in conjunction with this decision, to the landlord.

### Conclusion

#### **IT IS HEREBY ORDERED THAT:**

- 1. The application is granted.**
- 2. The landlord retains the tenant's security and pet damage deposits in the amount of \$1,025.00.**
- 3. The tenant pays to the landlord a total of \$7,144.98.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 25, 2022

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Residential Tenancy Branch