



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord:    **MNDL-S, MNRL-S, FFL**  
                                 Tenant:      **FFT, MNSDB-DR**

### Introduction

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

1. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Tenant's application pursuant to the Act for:

1. An Order for the return of the security deposit and pet damage deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the 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, the Landlord's Agent and I were the only ones who had called into this teleconference. The Landlord and the Landlord's Agent were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord and the Landlord's Agent that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and the Landlord's Agent testified that they were not recording this dispute resolution hearing.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on February 9, 2022 by Canada Post registered mail (the "NoDRP-L package"). The Landlord referred me to the Canada Post registered mail tracking as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP-L package five days after mailing them on February 14, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that she received a small package on June 27, 2022 containing the Notice of Dispute Resolution Proceeding package from the Tenant sent by registered mail (the "NoDRP-T package"). The Landlord provided the Tenant's tracking number as proof of service of which I noted on the cover sheet of this decision. I find that the Landlord was sufficiently served with the NoDRP-T package on June 27, 2022 in accordance with Section 71(2)(b) of the Act.

### Preliminary Matter

#### *Non-Attendance of the Tenant*

RTB Rules of Procedure 7.3 and 7.4 speak to what can happen to a party's application if they do not attend the hearing. They state:

#### **7.3 Consequences of not attending the hearing**

*If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

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

*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.*

I decline to consider the Tenant's evidence as the teleconference line was open for 24 minutes, and the Tenant did not call into the hearing. I dismiss the Tenant's application without leave to re-apply.

### Issues to be Decided

1. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that she purchased the property and took possession on December 4, 2020 and the Tenant was already residing in the unit. Monthly rent was \$1,300.00 payable on the first day of each month. A security deposit of \$625.00 was transferred to the new Landlord, and it is still held by the Landlord.

On September 17, 2021, the parties entered into a Settlement Agreement where the tenancy was mutually agreed to end on November 30, 2021. Settlement Agreement term number 2 stated that "*The landlord agreed that the tenant is permitted to vacate the rental unit earlier than November 30, 2021, provided that the tenant first gives at least 14 days' written notice by text message or email to the landlord*". The Tenant vacated the rental unit at the end of October without providing notice to the Landlord.

The Landlord testified that because of the lack of notice to vacate, the Landlord seeks unpaid rent for the month of November 2021 totalling \$1,300.00.

The Landlord also seeks compensation for the extensive cleaning that was required after the Tenant vacated. The Tenant smoked in the rental unit and the staining on the walls and ceiling from the smoking was a very difficult task to clean. The Landlord's Agent said the fridge was so dirty, it was difficult to tell if the plastic fixtures inside the

fridge were clear or frosted. After the Landlord's Agent cleaned the fridge, they could see the plastic was clear. The rest of the unit was so dirty it took almost 50 hours to get the rental unit cleaned enough where the new tenants coming in were agreeable to renting the rental unit. The total cost to clean the rental unit was \$2,190.00.

The Tenant had called the Landlord's Agent after a big bang was heard from the washing machine in the middle of the night. The Landlord determined that only the door was broken on the machine. The Landlord replaced the washing machine with a used unit. The cost for the replacement machine was \$250.00.

The Landlord's Agent said there was further clean up and garbage hauling before the rental unit was presentable for the new tenants. The Landlord's Agent testified that even the new tenants helped with hauling garbage away from the rental unit. The Landlord is not claiming compensation for the hauling of the garbage.

### 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(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not provide notice to the Landlord that he was vacating early from his tenancy as stipulated in the September 17, 2021 Settlement Agreement. Based on the undisputed testimony of the Landlord, I find the Landlord is entitled to compensation for November 2021's rent in the amount of **\$1,300.00**.

### ***Leaving the rental unit at the end of a tenancy***

**37** ...

(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*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord and the Landlord’s Agent testified that the Tenant did not leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of his tenancy. Cleaners spent close to 50 billable hours cleaning the rental unit, and several hours beyond that to clear away garbage from the residential property. The Landlord’s Agent found a used washing machine to replace the broken machine at the rental unit. The Landlord uploaded her receipts for the cleaning and for the purchase of the used washing machine for the rental unit.

I find that the Tenant breached Section 37(2)(a) of the Act. This breach of the Act resulted in loss or damage to the residential property which the Landlord had to clean up. The Landlord uploaded receipts for the cleaning time and cost to replace the washing machine. The Landlord’s Agent stated that more time was required to bring the rental unit up to healthy standards, but they are not claiming for the outside garbage hauling work that was done. I find the Landlord has proven this part of her monetary claim. Accordingly, I find that the Tenant owes **\$2,440.00** to the Landlord for this loss or damage.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord has proven her claims for compensation, and her monetary order is calculated as follows:

Item	Amount
Unpaid November 2021 rent	\$1,300.00
Cleaning	\$2,190.00
Washing machine replacement	\$250.00
Less security deposit	-\$625.00
Plus application filing fee	\$100.00
<b>TOTAL MONETARY AWARD:</b>	<b>\$3,215.00</b>

### Conclusion

I grant a Monetary Order to the Landlord in the amount of \$3,215.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: September 13, 2022

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Residential Tenancy Branch