



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

1. Attendance of Tenant

The tenants ("the tenant") did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. Service of Documents

The landlord testified the tenant moved out without providing a forwarding address. The landlord discovered the unit was abandoned on November 8, 2021.

Pursuant to a previous RTB Decision of January 14, 2022, the file number of which is referenced on the first page, the tenant provided their residential address to the landlord in writing on January 21, 2022. A copy of the document entitled "Return of Belongings" is signed by each tenant stated their forwarding address.

As the tenant did not attend the hearing, the landlord provided affirmed testimony as follows. The landlord served each tenant separately with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the residential address as set out in the above-mentioned document on February 10, 2022 and deemed received by each of them under section 90 of the *Act* five days later, that is, on February 15, 2022.

In support of service, the landlord provided a photograph of each envelope which includes the tracking numbers. They provided a copy of each receipt.

Further to the landlord's credible testimony and supporting documents, I find the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution on February 15, 2022, pursuant to sections 89 and 90.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Fixed term, furnished
Beginning Date	January 31, 2021
Fixed Term End Date	January 30, 2022
Vacancy Date	November 8, 2021
Rent payable on first of month	\$2,295.00
Security deposit	\$1,147.50
Pet deposit	0
Arrears of Rent and Utilities	\$12,120.00

Condition Inspection Report

A condition inspection was conducted on moving in which was signed by both parties. The landlord testified that the unit was in good condition in all relevant aspects. It had just been renovated and all contents were new. A copy of the report signed by parties submitted.

The tenant vacated the unit without notice. The landlord discovered they moved out on November 8, 2021.

The landlord then conducted an inspection without the tenants present as they did not have a forwarding address for the tenant at the time. The landlord signed the completed inspection report and submitted a copy.

Damage to Unit

Damage to the unit was observed after the tenant moved out and the unit needed cleaning and repairs.

The landlord submitted a comprehensive evidence package which included the signed condition inspection report on moving in, the report on moving out signed by the landlord listing each damaged item, dozens of photographs on moving out, receipts, and estimates of replacement/repair costs.

The landlord wrote as follows in support of their application:

The unit was abandoned and in shocking condition - full of trash, molding food leftovers, broken furniture, smelly cigarettes butts and molding food and drinks all over.

The landlord testified that tenants had not paid rent for 5 months before they abandoned the unit and \$12,120.00 is owing for outstanding rent and utilities.

The landlord testified as follows. The tenant damaged or removed many of the unit's contents. Damage included burned furniture surfaces, damaged beds, broken wardrobe, damage by a dog to various surfaces, a cracked sink and vanity, and missing contents. The landlord replaced the mail and door locks as the tenant did not return all keys.

The landlord testified she cleaned the unit herself with her husband for a total of 20 hours. The landlord requested reimbursement of the time spent for cleaning at \$50.00 an hour for a total of \$1,000.00.

The landlord provided a Monetary Order worksheet and a written summary of the damages for which they claimed compensation. They provided receipts or a written estimate of the replacement cost of each item of furniture damaged which included a photograph from a vendor and the selling price. The total of the damages for which the landlord claimed compensation was \$9,365.48.

The following is a summary of the landlord's claim:

ITEM	AMOUNT
Rent and utilities outstanding	\$12,120.00
Damages	\$9,365.48
Cleaning	\$1,000.00
Filing fee	100.00
TOTAL	\$22,585.48

Because of misunderstanding the landlord's rights, the landlord returned the tenant's security deposit. The tenant has not claimed for the return of the security deposit.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided credible testimony supported in all material aspects by a comprehensive document package. I find the landlord has met the onus of proof for each aspect of the claim.

My findings are as follows.

Cleaning and Damages

I accept the landlord's credible evidence and I find the tenant did not leave the unit in a reasonably clean or good condition as required under section 32 and the tenancy agreement. The photographs clearly show the poor state of the unit when vacated.

I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord fairly seeks compensation. I find the expenses for cleaning and replacement/repair of damaged furniture and contents are reasonable given the photographs, the landlord's testimony, and the remainder of the evidence. I accept the landlord's calculation of the claim for compensation as well supported by documentary evidence.

I accept the landlord's believable testimony the unit had been renovated before the tenant moved in and was in good condition. I further accept and find the contents and furnishings were similarly new and that many were damaged or missing.

I accept the landlord's evidence that they made reasonable efforts to mitigate loss and reduce expenses and carried out the work themselves in a timely manner. I accept the landlord's cost to replace the items to be as testified.

I find the landlord is entitled to reimbursement of the cleaning and damages expenses as claimed.

Outstanding Rent

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award for outstanding rent. The landlord provided believable testimony supported in all material aspects by comprehensive documents including a copy of the tenancy agreement, copies of utilities bills, and a Monetary Order Worksheet.

I have considered all the evidence submitted by the landlord including the tenancy agreement. I accept the landlord's testimony that the tenant vacated the unit leaving a balance of rent and utilities owing of \$12,120.00. I find the landlord has met the burden of proof with respect to the amount claimed in outstanding and accrued rent and utilities.

Filing Fee and Security deposit

As the landlord has been successful in this matter, I award reimbursement of the filing fee of \$100.00.

I accept the landlord's testimony and find the landlord returned the security deposit to the tenant.

Monetary Order

Considering my ruling with respect to the filing fee and my finding the landlord does not hold the security deposit, my final award is:

ITEM	AMOUNT
Rent and utilities outstanding	\$12,120.00
Damages to furnishings, contents	\$9,365.48
Cleaning	\$1,000.00
Filing fee	\$100.00
TOTAL	\$22,585.48

I grant a monetary award to the landlord in the amount of **\$22,585.48**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$22,585.48**. This Monetary Order must be served on the tenants. This Monetary Order may be filed and enforced in the Courts of the Province of BC.

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: September 15, 2022

Residential Tenancy Branch