



# 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 72 of the *Residential Tenancy Act* ("Act").

The landlord, a witness for the landlord, the tenant, his interpreter, and a witness for the tenant attended the first hearing. All parties (except for the landlord's witness) attended the second hearing. All parties who gave evidence were affirmed.

### 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 on January 1, 2020 and ended on April 30, 2022. The landlord retains a \$600 of the security deposit, pending the outcome of this application.

The landlord seeks compensation for various matters which are outlined below. The first item is for a fence that the tenant destroyed. In early January of 2020, the roof to the rental unit was leaking. The landlord's contractor came over to start the roof repairs and was immediately verbally harassed by the tenant. The tenant threatened to call the police. This behavior was also witnessed by the landlord. Both the landlord and the contractor testified regarding this incident.

The contractor removed two fence panels and set them aside. This was to help facilitate the removal of the old roof material.

The tenant, returning home, became “really upset”, violent, and started kicking the fence. the landlord and contractor further testified that the tenant “smashed [the fence panels] into tiny little pieces.” The tenant also physically removed each of the fence boards. The landlord seeks compensation in the amount of \$940.80. She does not know the age of the fence.

The landlord briefly cross examined the contractor and asked him if he knew the age of the fence. The contractor responded, “I don't know, I have no idea.” The contractor reiterated: the fence “was standing when I left, it did not fall over onto itself.” The landlord submitted photographs of the broken fence.

A second item for which the landlord seeks compensation is for what she has listed as a floor replacement. During the tenancy the tenant ended up building walls inside of the rental unit without the landlord's permission. He essentially divided the living room into two rooms which he then rented out. When the tenant removed this wall, damage to the floor resulted. Photographs of the damaged floor along with an estimate for repairs in the amount of \$3,711.82 was submitted into evidence by the landlord. The floors are laminate. While the landlord did not know the specific age of the laminate floors, she testified that they were newer, and likely installed sometime within the last five years.

The third item for which the landlord seeks compensation is unpaid utilities, specifically for a sewer bill from the municipality. The tenant is alleged to have not paid this amount which totals \$1,128.33. This amount was arrived at by the landlord prorating the amount for the period in which the tenant resided in the rental unit in 2022. There is no reference to sewer utilities being required to be paid by the tenant in the tenancy agreement, nor is there any other documentation pointing to the tenant's responsibility for paying the sewer.

Fourth, the landlord seeks compensation for the cost of removing the tenant's property and garbage at the end of the tenancy. She testified that there was “so much garbage everywhere.” There was a couch in the home, a huge stack of rugs, stuff from the remove walls, old tables on the yard, and a 10' Christmas tree with ornaments still attached to it, in the front yard. The landlord seeks \$940.80 in compensation for this claim. An invoice from the junk removal company was submitted into evidence.

Fifth, the landlord seeks \$3,000.00 in lost rent. In December 2021, the landlord issued a notice to end tenancy to the tenant. The tenant did not dispute the notice within the required time under the Act. He was expected to leave at the end of the year, but then in early January decided to file an application for dispute resolution to dispute the

notice. The landlord, however, expecting and hoping that the tenant would comply with the previously undisputed notice, lined up a new tenant take occupancy on February 1, 2022. The new tenant agreed to a tenancy in which they would pay \$2,200 in rent. A copy of this tenancy agreement was in evidence.

However, because the tenant deliberately dragged out the process, explained the landlord, the landlord lost the new tenant and thus lost the additional rent income for the period of February to the end of April, when the tenant finally moved out. (Calculated at \$2,200.00 - \$1,200.00 = \$1,000.00 x 3 months.)

Sixth and last, the landlord seeks to recover \$100.00 for the application filing fee.

The tenant testified (through his interpreter) that in the three previous years under which he had other landlords, there were zero complaints or issues. He asked, rhetorically, how come it was with this landlord that several issues arose. A “good tenant” is how he describes himself. The tenant argued that the landlord wanted to sell the property for more and applied pressure to evict the tenant.

The tenant testified that fixing of the ceiling was unnecessary and during COVID he did not want anyone in the house. The way to the house could have been through the front of the house where anyone can bring their truck or car to the yard. No point in going through the back alley. This is “not right.” He did want not anything to take place because it was not urgent and not necessary.

He further testified that that when they removed the fence, they removed the fence, it was the only way to protect the house. The house was open from the other side as well. Only a sliding door to the house. There were not locks on the house.

The tenant testified that the main point here is that the real reason behind all of this is because the landlord wanted him out of the house (to make a profit). No problem with previous landlord, but landlord wanted them out.

The fence was old from many, many years ago. Previous work was done on this fence. There is no reason why the tenant would remove the fence. The contractor removed the fence, and the fence was providing protection to the house from the outside.

According to the tenant, the landlord’s witness is her husband. They charged previous owner \$11,000 to make more money. It was not necessary to do the ceiling.

The witness (who was affirmed at 1:41 PM during the second hearing) testified that on the first day, when the landlord or their contractor parked the truck, there was no other car there. They parked in the back alley in front of the fence. And the landlord's photograph submitted into evidence was taken on another date, not the date in question.

She further testified that it was not necessary to remove the fence because they could just put up a ladder to access the roof of the property.

The main point reiterated by the tenant was that the previous owner came a few times to work on the house but that he accessed the property the correct way. Coming in through the back was the "wrong way."

Regarding the floor, the tenant testified that they rented the house 3 years ago. This place was "not liveable at all." Worked for three weeks to make it liveable, removing garbage, fixing the water tap, and so forth.

He remarked that there was no walk-through inspection when he started living there. At the end of the day, the tenant did a lot of work during the tenancy in order to live in the rental unit. The tenant also testified that when they moved into the rental unit there was a lot of stuff in the storage, garbage needed removing, and the previous owner can verify this.

Next, the tenant testified that there are some bills for utilities or sewage not paying anything because it was not his responsibility to pay these. The previous landlord took care of the bills.

Regarding the rent, he paid the rent on time in full during the tenancy. He paid what he owes and does not owe anything else to the landlord.

The tenant said that when he talked to previous landlord that when he was selling the house, he wanted the tenant to stay there because he was a good tenant. The previous landlord spoke to the new landlord and explained that he was a good tenant who should stay there.

Regarding the notice to end tenancy, the tenant had difficulty disputing the notice in time. He did not speak English and his daughter had COVID at the time. During this time moving out was very difficult, and the landlord gave the tenant a false image that the landlord was "going to keep them [the tenant]."

He testified that the landlord “pressured him” so much through notices and text message. He was struggling and his family was struggling with COVID, but the landlord would arrange showings of the property on the weekend—this was cause stress upon the tenant and his family.

During the period near the end of the tenancy, the landlord was telling the tenant that they had new tenants and he might be responsible for paying the new tenants the cost of their accommodation. This caused additional stress. The landlord made “many, many arrangements” for both selling the house but also for renting.

Because the tenant had a problem understanding the landlord’s messages, he was forced to retain and pay for a lawyer. This cost him about \$3,500. He added that he withdrew his own application for dispute resolution seeking compensation against the landlord. He also said that he lost some of his own property in the move.

Regarding the chairs in the storage room, the photos are from the day before the relevant date. He removed the items.

In conclusion, the landlord pressured him not because of problems in the house but to get him out so that she could re-rent the place for more and to sell the property. These are the “real reasons” behind the application.

In rebuttal, the landlord reiterated the horrible and traumatizing interactions they had with the tenant. Tenant told the landlord not to continue with the roof repairs. However, the landlord felt that these were urgent repairs and needed to be undertaken at once.

The landlord was “terrified” that the tenant would go out and find someone to work on the roof. She was able to get a roofer. The landlord stressed that the witness is not her husband. She did not charge the previous owner. She reiterated that the tenant came out and threatened the landlord while she was on the roof.

Regarding the access issue, the landlord submitted that one can access the house from both the front and the back alley. She also briefly spoke to the tenant not giving her with proof of payment for reimbursement of a repair. Regarding the utility bill, the sewer is not included in the tenancy agreement. Regarding not disputing the notice to end the tenancy, this was dealt with in another dispute. As for the landlord’s “pressuring” the tenant to move, the landlord in fact asked the tenant to lower the number of occupants residing in the rental unit.

## 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.

### **1. Claim for Utilities (\$1,128.33)**

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.

In this case, there is nothing in either the written tenancy agreement (such as an addendum to that agreement) or any other documentary proof establishing that the tenant had a legal obligation to pay for sewage disposal under the tenancy. The onus to prove that the tenant was liable for paying for sewage falls upon the landlord making the claim. The landlord has not, I find, proven that this is the case. Accordingly, the landlord's claim for utilities is dismissed.

### **2. Claim for Floor Replacement (\$3,711.82)**

Section 37(2)(a) of the Act requires that a tenant "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" when they vacate.

In this dispute, while there is no condition inspection report in evidence (apparently, none was ever completed), the tenant did not dispute that he erected walls within the rental unit. However, without a completed condition inspection report—which is a requirement under sections 23, 24, 35, and 36 of the Act—and without photographs of the state of the floor at the start of the tenancy, I am not persuaded that the tenant was necessarily wholly responsible for damaging the floor.

What is more, the landlord's quotation for repairing the floor is dated July 15, 2022, a full two-and-a-months after the end of the tenancy, and when new tenants were already purportedly living in the rental unit. As such, I am not satisfied that the landlord has proven, on a balance of probabilities, either the extent to which the tenant was responsible for damaging the floor or the amount.

Accordingly, this aspect of the landlord's claim is dismissed.

### **3. Claim for Garbage Removal (\$940.80)**

As before, section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

As with the previous claim, the landlord did not provide either a condition inspection report or any photographs of the state and condition of the rental unit at the start of the tenancy or at the end of the tenancy. The only “evidence” provided was a copy of an invoice from 1-800-GOT-JUNK. An invoice does not prove that the tenant breached section 37(2)(a) of the Act.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that she is entitled to compensation for this claim for garbage removal.

### **4. Claim for Lost Rent (\$3,000.00)**

In respect of this claim, I am not persuaded that the landlord has established, on a balance of probabilities, that the tenant breached the Act from which compensation may flow.

It should be noted that the landlord was granted (in a separate, previous file) an order of possession of the rental unit on April 21, 2022. By all accounts, and based on the landlord’s own testimony, the tenancy ended on April 30, 2022. As such, I am not persuaded that the landlord somehow suffered a loss of rent in the amount of \$3,000. Accordingly, this aspect of the landlord’s claim must be dismissed.

### **5. Claim for Fence Replacement (\$2,385.08)**

Again, section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Based on the evidence before me, I am persuaded that the tenant deliberately damaged the fence. While there is no condition inspection report in existence, it is my finding that the photographs of the fence before being damaged, coupled with the witness’ testimony and statement, establish the tenant’s breach of the Act. But for the tenant’s deliberate smashing of the fence into lots of little pieces the landlord would not have suffered a loss.

In respect of the value of the claim, however, I am unable to find that the amount of \$2,385.08 accurately represents the actual loss. In looking at the photographs of the fence pre-smashed, the fence appears to be rather aged and well-worn. The landlord did not know the age of the fence.

What this all means is that a landlord cannot claim a full replacement cost for property less when the property has little useful life remaining. Ordinarily, an amount of depreciation is applied to such losses (see Residential Tenancy Policy Guideline 40) but in this case, without knowing the age of the fence, such depreciation cannot be accurately applied. As such, I am not satisfied that the landlord has proven the dollar amount claimed.

That having been said, I am prepared to award nominal damages in the amount of \$500.00. "Nominal damages" are considered a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

#### **6. Claim for Recovery of Cost of Application Filing Fee (\$100.00)**

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.

As the landlord was successful in proving at least one of their claims she is entitled to recover the cost of the application filing fee in the amount of \$100.00.

#### **Summary of Award and Retention of Security Deposit**

In total the landlord is awarded \$600.00. It is noted that the tenant's security deposit of \$600.00 is currently being held in trust by the landlord pending the outcome of this application.

Section 38(4)(b) of the Act permits me to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain the tenant's security deposit of \$600.00 in full satisfaction of the amount awarded.



Conclusion

**The landlord's application is granted, in part.**

**The landlord is awarded \$600.00 and is hereby authorized to retain the tenant's security deposit in full satisfaction of this award. The remainder of the landlord's application and claims therein are dismissed without leave to reapply.**

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: October 12, 2022

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Residential Tenancy Branch