



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      MNDL-S MNRL-S FFL

### Introduction

The landlord seeks compensation from their former tenant pursuant to sections 26, 57, 67, and 72 of the *Residential Tenancy Act* (the “Act”).

The landlord attended the arbitration hearing whilst the tenant did not. The landlord testified under oath that they served the *Notice of Dispute Resolution Proceeding* on the tenant by email on or about April 21, 2022. A document submitted into evidence confirms that the tenant permitted service by email. Based on this evidence I find that the tenant was served with the required paperwork necessary for them to participate in the dispute resolution process.

### Issue

Is the landlord entitled to compensation?

### Background and Evidence

The tenancy began February 13, 2020 and was ended, by way of an adjudicator’s decision dated November 5, 2021, on October 3, 2021. (See previous file referenced on the cover page of this Decision.) However, the tenant did not vacate the rental unit until November 19, 2021. Monthly rent was \$1,000.00 and the tenant paid a \$500.00 security deposit. The deposit is being held in trust pending the outcome of this application.

The landlord seeks \$4,573.37 comprised of \$1,000.00 in rent for October 2021, \$633.33 for “prorated” rent for November 1-19, 2021, \$1,663.20 for repairs and garbage removal, \$181.39 for “paint, supplies for repairs,” \$425.00 for “cleaning after move-out and debris removal” (for Ms. M.R.), \$425.00 for “cleaning after move-out and debris removal” (for individual Ms. D.T.), \$145.45 for dumping fees charged by the Peace River Regional District, and \$100.00 for the Residential Tenancy Branch’s application filing fee.

The landlord testified under oath about the extensive damages and repairs that were needed after the tenant left. Apparently, the tenant was repairing and painting bicycles inside the rental unit. This caused a lot of damage. In addition, the tenant smoked inside what was a non-smoking rental unit. Painting also needed to be done.

Submitted into evidence were several photographs of the rental unit and yard, a copy of the Condition Inspection Report, invoices, and the tenancy agreement.

### Analysis

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. 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.

#### *1. Claim for Rent*

The adjudicator's decision of November 5, 2021 held that the tenancy was presumed to have ended on October 3, 2021. As such, a claim for rent cannot "technically" be made against a tenant who remains in a rental unit beyond the end of the tenancy. However, a landlord is entitled to be compensated, nevertheless.

In this case, the tenant is considered an "overholding tenant" because they continued to occupy the rental unit after the tenancy ended (section 57(1) of the Act). And a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended (section 57(3) of the Act).

The tenant overheld until November 19 and the landlord is entitled to compensation (equivalent to rent that would have otherwise been paid) of \$1,633.33.

#### *2. Claims for Repairs, Garbage and Debris Removal, Paint, Supplies for Repairs, Cleaning, and Dumping Fees*

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.

The condition inspection report, the photographs, and the landlord's *viva voce* evidence persuades me to find that the tenant did not leave the rental unit reasonably clean and undamaged. This includes the leaving of garbage and detritus behind. The landlord is thus entitled to the compensation sought.

### *3. Claim for Filing Fee*

An arbitrator may order one party to pay a fee to the opposing party. Normally, when an applicant is successful in their application the respondent is ordered to pay an amount equal to the applicant's filing fee. In this case, since the landlord was successful, the tenant is ordered to pay the applicant \$100.00 (pursuant to section 72 of the Act).

### *Summary and Order*

I award the landlord \$4,573.37 and authorize the landlord to retain the security deposit as partial payment toward the award (section 38(4)(b) of the Act).

**Pursuant to sections 57(3), 67, and 72(1) of the Act the tenant is hereby ordered to pay \$4,073.37 to the landlord.** A copy of a monetary order is issued with this Decision to the landlord; the landlord must serve a copy of the monetary order upon the tenant.

### Conclusion

The application is granted.

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

Dated: December 15, 2022

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Residential Tenancy Branch