



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **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.

ET and JS attended as agents for the landlord ("the landlord"). The tenant attended.

ET provided testimony on behalf of the landlord and stated they were a representative of the property management company.

The tenant acknowledged service of the landlord's materials.

The tenant stated they had not sent their submitted documents to the landlord. Accordingly, I do not consider the tenant's materials.

Both parties confirmed they were not recording the hearing.

Both parties provided their email address for receipt of the Decision.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

This is an application by a landlord for compensation for damages allegedly caused by the tenant. The landlord submitted evidence and testimony in a 40-minute hearing. The tenant submitted no admissible documentary evidence but responded to the landlord's claims in testimony.

### *Background*

The landlord submitted a copy of the tenancy agreement. The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	March 15, 2022
Fixed Term End Date	One year
Vacancy Date	May 14, 2022
Unit Rented Again	May 15, 2022
Rent payable on fifteenth	\$4,200.00
Security deposit	\$2,100.00
Condition Inspection Report on Move-In signed by both and submitted	Yes
Condition Inspection Report on Move-out signed by both and submitted	Yes
Arrears of Rent	none

On the submitted copy of the tenancy agreement, there is a handwritten note with initials:

If I move out after 6 month, I'm not going to ask for security deposit. [signed initials] PB

The tenant acknowledged the handwriting and initials were hers.

The agreement included a term that the electricity and heat were the responsibility of the tenant.

The agreement did not include a liquidated damages clause.

#### *Claims by Landlord*

The landlord clarified their claim as follows:

	ITEM	AMOUNT
1.	Costs of Re-renting	\$2,205.00
2.	Cleaning	\$168.00
3.	BC Hydro	570.82
4.	Liquidated damages	\$2,100.00
5.	Filing fee	\$100.00
	(Less security deposit)	(\$2,100.00)
	<b>TOTAL</b>	<b>\$3,043.82</b>

Each claim is addressed.

1.           *Rental fee*    \$2,205.00

The tenant acknowledged terminating the fixed term lease after two months and testified they did not move into the building. They lived in another unit in the apartment complex which they lived in for many years before and during this agreement.

The landlord testified as follows. They incurred a fee when the unit was rented again during the fixed term period. The landlord submitted a copy of the invoice dated June 3,

2022, in the amount of \$2,205.00. The invoice stated the amount is for a “placement fee”. The invoice does not provide details.

The landlord testified as follows. They acknowledged the tenant proposed the replacement occupant of the unit. However, the landlord spent time and incurred expenses in carrying out prudent due diligence such as screening the applicant, obtaining credit checks, and preparing/signing a new lease. The landlord also conducted an inspection on moving out of the unit (tenant) and inspection on moving in (new occupant). The landlord is entitled to compensation in the amount claimed.

The landlord pointed to the tenant’s handwritten note on the lease saying they would forfeit the security deposit if they moved out at 6 months. The landlord asserted the tenant had agreed in advance to the forfeiture of the security deposit.

The tenant denied the landlord incurred the fee although they had received a copy of the invoice.

The tenant denied the property management company had to do anything as the tenant had proposed the new occupant of the unit.

The tenant acknowledged writing the note in the agreement. However, they denied there was any meaning it in the circumstances or that the note meant they would forfeit the security deposit if they moved out early.

3.            *Cleaning*        \$168.00

The landlord submitted an invoice for cleaning in the amount of \$168.00 relating to cleaning at the end of the tenant’s tenancy and before the new occupant move in.

The condition inspection reports on moving in and moving out show the unit was in the same condition when the tenant moved out as when she moved in. The submitted reports are dated and signed by both parties.

Nevertheless, the landlord asserted it was policy of the property management company to have each unit professionally cleaned before a new tenant moved in. The landlord denied knowing the tenant had never actually moved in.

The tenant denied the landlord is entitled to a cleaning fee in the circumstances as she had never moved into the unit.

4. *BC Hydro* \$570.82

The landlord submitted two copies of Final Disconnection Notices from BC Hydro to disconnect hydro to the unit if the outstanding total bill in the total amount of \$570.82 remained unpaid.

The Notices are addressed to the previous occupant of the unit as the tenant did not have the hydro account transferred to their name. The landlord testified the tenant is responsible for the invoices as they reflect the cost of power for the unit during the 2-month tenancy.

The Notices do not state the period for which the charges were incurred. The hydro Notices are for the following amounts:

ITEM	AMOUNT
April 14, 2022	\$278.49
May 11, 2022	\$292.33
<b>TOTAL</b>	<b>\$570.82</b>

The tenant acknowledged they were required to pay hydro under the tenancy agreement, but denied any responsibility for the invoices as they had not moved in.

The landlord requested an award in the amount claimed.

2. *Liquidated damages* \$2,100.00

The landlord acknowledged the parties did not sign an agreement containing a liquidated damages. The submitted tenancy agreement does not include a liquidated damages clause.

Nevertheless, the landlord asserted entitlement to liquidated damages as the tenant had breached a fixed term lease.

The tenant denied the landlord was entitled to liquidated damages.

5.            *Filing fee*        \$100.00  
              *(Less security deposit)*        (\$2,100.00)

The landlord claimed reimbursement of the filing fee of \$100.00 and authorization to apply the security deposit to any award.

### *Summary*

The landlord claimed a Monetary Order as set out above. The tenant requested that the landlord's claim be dismissed without leave to reapply.

### Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

### *Obligations of Tenants and Landlords*

The obligations of the parties are set out in the Act and clarified in *Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises*.

Section 32 states as follows (emphasis added):

**Landlord and tenant obligations to repair and maintain**

**32 (1) ...**

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for **reasonable wear and tear.**

Section 37(2)(a) of the Act states that when tenants vacate a rental unit, the tenants must leave it **reasonably clean** and undamaged except for reasonable wear and tear. The section states (emphasis added):

(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.

*Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

. . .

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

### *Credibility*

A useful guide with respect to the determination of credibility, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright.



I find the landlord's version of events and claims to be consistent with the probabilities that surround the events of the tenancy as I understand them. I find the landlord's evidence to meet the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. While I do not agree with all the landlord's claims, I found their evidence generally reliable.

I do not find the tenant's submissions to be persuasive. They testified they were an experienced tenant and had lived in the building for many years. Yet they expressed disbelief about key aspects of the landlord's claims. For example, they denied responsibility for the hydro expense or that the landlord incurred time and expenses in vetting the new occupant. I find the tenant's testimony disingenuous and do not place much weight on her evidence.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties' conflict, I give greater weight to the landlord's evidence.

My findings follow.

1.                *Rental fee*     \$2,205.00

I find the landlord has met all four parts of the 4-part test under this heading.

I find the tenant breached the fixed term tenancy as acknowledged. They have failed to comply with the tenancy agreement and acknowledged ending the lease two months into a 12-month fixed term.

As a result of the tenant's breach, the landlord incurred the loss claimed of the fee described in the submitted invoice.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times.

However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental.

Even though the tenant located a new tenant, I accept the landlord's testimony as to the due diligence efforts required before the replacement occupant moved into the unit.

I find the landlord has met the burden of proof with respect to this aspect of the claim by submitting a copy of the invoice and testifying to the necessary duties carried out.

Finally, I find the landlord has done whatever is reasonable to minimize the damage or loss. Accordingly, the unit was rented as soon as the tenant ended the tenancy with no loss of rental income. There is no claim for loss of rent.

Accordingly, I grant the landlord a monetary award under this heading as claimed.

2.                    *Cleaning*        \$168.00

I find the landlord has not met the balance of probabilities under this heading.

As stated earlier, the tenant's obligation is to leave the unit "reasonably clean". I accept the tenant's testimony they did not move in. The condition inspection reports indicate no difference in the condition of the unit when they moved in and when they moved out.

Accordingly, I find the tenant did not fail to comply with the Act, regulations, or the tenancy agreement.

I dismiss this aspect of the claim without leave to reapply.

3.                    *BC Hydro*        570.82

I find the landlord has met all four parts of the 4-part test under this claim.

I find the tenant was required to pay hydro for the unit under the tenancy agreement and did not do so. Therefore, the tenant failed to comply with the tenancy agreement.

I find the landlord has proven they incurred the hydro expense claimed based on the submitted invoices and the landlord's testimony. The tenant submitted no evidence the landlord could have done anything to reduce this cost.

I find the landlord is entitled to a monetary award under this section.

4.                      *Liquidated damages*                      \$2,100.00

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes,

“A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement... There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.”

The landlord acknowledged that the agreement did not contained a liquidated damages clause. The tenant stated that the landlord did not establish any costs or time in finding another occupant of the unit.

The landlord stated that the amount claimed for liquidated damages was a reasonable claim as the tenant vacated before the end of the term.

The landlord submitted testimony of costs and time along with a copy of the proof of expenses for re-renting the unit. I have provided the landlord an award for these expenses based on the submitted invoice.

I find this claim is unwarranted in the circumstances and, if awarded, would amount to a penalty. I find an award under this claim heading would amount to an unfair doubling of the earlier award.

The claim under this heading is dismissed without leave to reapply.

5.            *Filing fee*        \$100.00  
                  *(Less security deposit)*        (\$2,100.00).

As the landlord has been successful in this matter, I grant the landlord reimbursement of the filing fee and authorization to apply the security deposit to the award under section 72.

#### *Summary of Award*

My monetary award is summarized:

	ITEM	AMOUNT
1.	Rental fee	\$2,205.00
2.	Cleaning	0
3.	BC Hydro	570.82
4.	Liquidated damages	0
5.	Filing fee	\$100.00
	(Less security deposit)	(\$2,100.00)
	<b>TOTAL</b>	<b>\$775.82</b>

Accordingly, the landlord is granted a Monetary Order against the tenant for **\$775.82**.

Conclusion

I grant the landlord a Monetary Order for \$775.82.

This Monetary Order must be served on the tenant.

This Monetary Order may be file 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: February 07, 2023

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Residential Tenancy Branch