



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

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

- a Monetary Order of \$1,500.00 for unpaid rent pursuant to sections 26 and 67;
- a Monetary Order of \$896.00 for damage that the Tenant, their pets or their guests caused during the tenancy pursuant to sections 32 and 67
- a Monetary Order of \$2,617.44 for monetary loss or other money owed pursuant to section 67;
- an order to keep the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Tenant and the Landlords' agents KEC and KRC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

KEC confirmed that the Tenant provided an invalid forwarding address, so the Landlords obtained a substituted service order to serve the Tenant via email. The Tenant confirmed receipt of the notice of dispute resolution proceeding package and the Landlord's evidence (collectively, the "NDRP Package"). I find the Tenant was served with the NDRP Package in accordance with sections 88(i) and 89(1)(e) of the Act.

The Tenant confirmed that he was relying on oral testimony for this hearing.

### Preliminary Matter – Co-Tenants

It is not disputed that there were other co-tenants on the parties' tenancy agreement who are not party to this application. KEC stated that those individuals had moved out of the rental unit earlier for different reasons. The Tenant questioned why the charges were being pinned on him.

Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants states:

#### **D. DEBTS OR DAMAGES**

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.

(emphasis added)

In this case, I do not find any evidence to suggest that the Tenant and the other co-tenants were not jointly and severally liable under their tenancy agreement. Therefore, I conclude the Landlords may proceed with this application solely against the Tenant.

### Issues to be Decided

1. Are the Landlords entitled to:
  - a. \$1,500.00 for unpaid rent?
  - b. \$896.00 for damage that the Tenant, their pets or their guests caused during the tenancy?
  - c. \$2,617.44 for monetary loss or other money owed?
2. Are the Landlords entitled to recover the filing fee and to keep the Tenant's security deposit?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on September 1, 2021 and was to be for a fixed term ending on August 31, 2022. Rent was \$3,000.00 per month. The Tenant paid a security deposit of \$1,500.00 which is held by the Landlords.

KEC testified that the tenancy was ended early on March 31, 2022, after the Landlords served a one month notice to end tenancy for cause (the “One Month Notice”) on the Tenant, which the Tenant accepted. KEC explained the notice was served after months of receiving complaints from neighbouring units.

The Landlords submitted a monetary order worksheet stating the amounts claimed as follows:

<b>Item</b>	<b>Amount</b>
Blind Repair	\$147.00
Cleaning	\$200.00
Carpet Cleaning	\$113.40
Rubbish Removal	\$236.25
Flooring Repair	\$892.50
Rent Owed	\$1,500.00
Liquidated Damages	\$1,500.00
Bylaw Infraction	\$200.00
Filing Fee	\$100.00
<b>Total</b>	<b>\$4,889.15</b>

KEC stated that some of the figures have changed since the Landlords made this application. KEC confirmed that all of the changes were downward changes, so the total amount claimed is less than what was initially stated on the Landlords’ application.

KEC testified that the rental unit has very large windows and blinds, about 12 feet high. KEC stated the Tenant had tied up the strings on the blinds to the point that the blinds

were no longer functional. KEC stated that the blinds were not in this condition during the move-in inspection. KEC confirmed that a copy of the condition inspection report had been given to the Tenant. KEC stated that the Landlords had to hire a company to fix the blinds.

KEC testified that the rental unit required a good cleaning upon the Tenant's move out. KEC stated the cleaner cleaned for 5 hours at \$40.00 per hour.

KEC stated that the carpets were not vacuumed and were very dirty. KEC referred to photographs of the carpet submitted by the Landlord. KEC submitted that the cost of carpet cleaning was reasonable and normal for a three-bedroom unit.

KEC testified that there was junk left behind and food in the fridge during the move-out inspection. According to KEC, the Tenant's attitude had been that it was the best the Tenant could do and to bill him. KEC referred to photographs submitted by the Landlords.

KEC testified the carpet in the master bedroom had been cut, and referred to photograph submitted by the Landlords. KEC testified that the hardwood floor in the dining was also damaged due to the Tenant having a pool table there with no carpet or felt pad underneath. KEC stated that the Landlords wanted to replace the flooring because of the poor conditions, but he recommended having the floor re-finished at around \$800.00 versus around \$4,500.00 for a replacement.

The Landlords submitted invoices to support each of the blind repair, carpet and flooring repair, as well as cleaning expenses claimed.

KEC testified that the Landlords had new tenants lined up for April 1, 2022, but due to the condition of the rental unit left by the Tenant, the new tenants could not move in until April 15, 2022. KEC testified that they didn't want to have trades people interfering with the new tenants moving in. KEC referred to a copy of the new tenancy agreement submitted into evidence by the Landlords. KEC testified that the Landlords lost half a month's rent as a result.

In support of the Landlords' liquidated damages claim, KEC referred to clause 39 of the parties' tenancy agreement which states:

If the tenant breaches a material term of this agreement that causes the landlord to end tenancy of any fixed term, or if the tenant provides the landlord notice, whether written, oral, or by conduct, of an intention to breach this agreement and the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$1500.00 as liquidated damages and not as a penalty or [*sic*] all costs associated with re-renting the rental unit.

KEC argued the Tenant had breached material terms of the tenancy agreement causing the Landlords to issue the One Month Notice, so the Landlords should be entitled to liquidated damages.

KEC stated that they had disputed many strata infractions on the Tenant's behalf, eventually whittling down the fines from \$1,200.00 to \$200.00. KEC confirmed that the Tenant had signed a Form K upon moving in. KEC referred to email correspondence submitted as evidence by the Landlords.

In response, the Tenant testified that there were some conflicts and problems caused by his roommates during the tenancy.

The Tenant agreed for the Landlords to use the security deposit to cover the flooring repairs, as the Tenant acknowledged that the floor was scratched. The Tenant also stated that he will accept the cleaning charges, since he had tried to clean the rental unit but could not get help. The Tenant stated that he will also accept the strata fine because the fines have already been reduced, though he did not think it was fair.

The Tenant stated that he did not recall the blinds being an issue during the inspection. The Tenant stated that the damage to the carpet was in a room occupied by another person, which the Tenant didn't know how to explain.

The Tenant disagreed that he was liable to pay \$3,000.00 for rent and liquidated damages. The Tenant argued that he had left the rental unit before April 1, 2022.

The Tenant stated that he agrees to make a partial payment on the claims sought by the Landlord.

## Analysis

*1(a). Are the Landlords entitled to \$1,500.00 for unpaid rent?*

I find the Landlords are claiming \$1,500.00 in lost rental income for a portion of April 2022, rather than for unpaid rent, as it is not disputed that the tenancy ended on March 31, 2022. Under Rule 4.2 of the Rules of Procedure, an application may be amended at the hearing in circumstances that can reasonably be anticipated. I find this amendment can reasonably be anticipated, and I allow the Landlords to amend their claim for unpaid rent to a claim for lost rental income.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent, “when a landlord ends a fixed term tenancy early as a result of the tenant’s actions (such as not paying rent or most of the grounds for cause), the landlord may also be able to claim the loss of rent for the remainder of the term of the tenancy agreement.” A landlord must do whatever is reasonable to minimize their damages or loss, which includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.

I find this tenancy was a fixed term tenancy that was ended prematurely on March 31, 2022 under the One Month Notice, which the Tenant did not dispute. I find the Tenant to have breached the fixed term since the tenancy was ended for cause. Therefore, I find the Tenant is liable to the Landlords for loss of rent for the remainder of the fixed term.

Section 67 of the Act states:

### **Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], 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.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

### **C. COMPENSATION**

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. In order to determine whether compensation is due, the arbitrator may determine 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.

Based on the new tenancy agreement submitted by the Landlords, I find the rental unit was re-rented for the same price (\$3,000.00 per month) on April 15, 2022. I find the Tenant acknowledged that cleaning and repairs were required at the time of his move-out. Based on the evidence presented, I find two weeks to be a reasonable period of time to complete the cleaning and repairs. As such, I conclude the Landlords acted reasonably to minimize their loss of rental income after the tenancy ended.

Pursuant to section 67 of the Act, I order the Tenant to pay \$1,500.00 to the Landlords for partial loss of April 2022 rent.

*1(b). Are the Landlords entitled to \$896.00 for damage that the Tenant, their pets or their guests caused during the tenancy?*

Section 32(3) of the Act states that 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.

I find it is not disputed that a piece of the carpet in the master bedroom was cut out and the dining room floor was scratched by the Tenant's pool table during the tenancy. I find the Tenant has an obligation to repair such damage under section 32(3) of the Act. I find

the Landlords have provided an invoice for the repair cost and have reasonably mitigated their losses by re-finishing instead of replacing the floor.

Therefore, pursuant to sections 32 and 67 of the Act, I allow the Landlords to recover \$892.50 from the Tenant for damage to carpet and flooring.

*1(c). Are the Landlords entitled to \$2,617.44 for monetary loss or other money owed?*

The Landlords also seek compensation for (i) various cleaning expenses, (ii) blind repair, (iii) liquidated damages, and (iv) a strata fine for bylaw infractions.

*i. Cleaning Expenses*

Section 37(2)(a) of the Act states that when a tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

According to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, where the “tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy”. Based on the photographs submitted by the Landlord, I find there were several stains left on the carpet. Therefore, I find the Tenant was responsible for cleaning the carpet at the end of the tenancy. I find the Landlords have provided an invoice to support the amount claimed.

In addition, I find the photographs submitted by the Landlords show that the Tenant left behind garbage including food in the cabinets and fridge. The rubbish removal invoice submitted by the Landlords indicate that other items had to be removed, including wood left on the balcony and a fan and BBQ cover left in the common area. I find the photographs showed that the rental unit required cleaning, which was acknowledged by the Tenant. I find the Tenant agreed to accept the cleaning charges during the hearing.

Based on the above, I allow the Landlords’ claims for carpet cleaning (\$113.40), cleaning (\$200.00), and rubbish removal (\$236.25) under section 67 of the Act.



*ii. Blind Repair*

I have reviewed the condition inspection report submitted into evidence by the Landlords. I find this report does not indicate any damage to the blinds at the time of Tenant's move-out. I find the Landlords have not submitted photographs to show why the blinds required repair. Furthermore, I find the invoice for the blind repair submitted by the Landlords is dated June 1, 2022, well after the Landlords' new tenants moved in on April 15, 2022. Based on the foregoing, I am not satisfied that the Landlords have proven that any damage to the blinds was caused by the Tenant or a person permitted into the rental unit by the Tenant during the tenancy. Therefore, the Landlords' claim under this part is dismissed without leave to re-apply.

*iii. Liquidated Damages*

Residential Tenancy Policy Guideline 4. Liquidated Damages states:

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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

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. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the

clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

In this case, I find the liquidated damages clause in the tenancy agreement (clause 39) to be enforceable. I find 50% of the monthly rent to be a genuine pre-estimate of the costs that the Landlords would incur to re-rent the rental unit, such as advertising, showing, interviewing, and administration costs resulting from an early termination of this tenancy. I have already found above that the Tenant breached the fixed term since the tenancy was ended for cause. I find the Tenant had initialled and agreed to the liquidated damages clause in the tenancy agreement. Therefore, I award the Landlords \$1,500.00 for liquidated damages pursuant to section 67 of the Act.

*iv. Bylaw Infraction*

I find the Landlords submitted email correspondence from the strata manager which confirms that they have been fined \$200.00. I find this penalty was levied due to the behaviour of the Tenant and/or the Tenant's roommates or guests during the tenancy. I further find that this charge is not disputed by the Tenant. Pursuant to section 67 of the Act, I allow the Landlords to recover \$200.00 from the Tenant for the strata fine levied for bylaw infractions.

*2. Are the Landlords entitled to recover the filing fee and to keep the Tenant's security deposit?*

The Landlords have been successful in this application. I grant the Landlords recovery of their filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenant's \$1,500.00 security deposit in partial satisfaction of the total awarded in this decision.

The Monetary Order granted to the Landlords for the balance is calculated as follows:

<b>Item</b>	<b>Amount</b>
Partial Loss of Rental Income in April 2022	\$1,500.00
Flooring Repair	\$892.50
Carpet Cleaning	\$113.40
Cleaning	\$200.00

Rubbish Removal	\$236.25
Liquidated Damages	\$1,500.00
Bylaw Infraction	\$200.00
Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$4,742.15</b>
Less Security Deposit	- \$1,500.00
<b>Total Monetary Order for Landlords</b>	<b>\$3,242.15</b>

### Conclusion

The Landlord's claim for blind repairs is dismissed without leave to re-apply. The balance of the claims sought by the Landlords totalling \$4,742.15 is granted. The Landlords are authorized to retain the Tenant's \$1,500.00 security deposit in partial satisfaction of the total amount awarded.

Pursuant to sections 67 and 72 of the Act, I grant the Landlords a Monetary Order in the amount of **\$3,242.15** for the balance. 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 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 *Residential Tenancy Act*.

Dated: February 03, 2023

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Residential Tenancy Branch