



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 2:06 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

### **Preliminary Issue - Service of the Landlord's Application for Dispute Resolution**

The landlord testified that they had served the tenant by way of registered mail, but the tracking number provided during the teleconference call could not be located on the Canada Post tracking website.

As the tenant was not in attendance to confirm receipt of the landlord's package and evidentiary materials, proof of service is required to ensure that the tenant was served in accordance with sections 88 and 89 of the *Act*.

I note that RTB Rules of Procedure 3.19 states that no additional evidence may be submitted after a dispute resolution hearing starts, except as directed by the arbitrator. In this case, I ordered that the landlord submit proof of service of the application before February 16, 2023, which the landlord complied with. I did this for the purpose of ensuring that the tenant was properly served in accordance with sections 88 and 89 of the *Act*, taking in consideration that this additional evidence would not prejudice the tenant.

Along with the proof of service, the landlord provided an explanation for why the tracking numbers could not be located on the Canada Post website. The landlord provided the tracking number, which is noted on the cover page of this decision, along with the confirmation that the tenant had received and signed for the package on June 25, 2022. The landlord stated that they had contacted Canada Post, and they were informed that the tracking number was too old to be accessible through the website. I am satisfied with this explanation, and accept that this late submission of the proof of service was not due to the landlord's neglect or intentional actions.

I am satisfied that the landlord had provided sufficient proof of service to support that the tenant was properly served with the landlord's application and evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant duly served with the landlord's application and evidence on July 25, 2022, the date the package delivered, and signed for by the tenant.

The tenant did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This one year, fixed-term tenancy began on July 1, 2019. Monthly rent was set at \$2,595.00, payable on the first of the month. The landlord still holds the tenant's security deposit of \$1,297.50 for this tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on July 16, 2020, which indicated an effective date of August 31, 2020, for operating a short-term rental business out of the rental unit without the landlord's permission. The landlord applied for an Order of Possession pursuant to that 1 Month Notice on August 20, 2020. The landlord testified that the tenant abandoned the rental unit on August 31, 2020 before a hearing was held.

The landlord filed this application to recover the unpaid rent and losses associated with this tenancy as set out in the table below:

<b>Item</b>	<b>Amount</b>
Bedding & kitchenware	\$230.12
Kitchenware	25.13
Repairs	553.88
Locksmith for rekeying of front door	111.50
Mailing cost: Notice of Final Opportunity	14.33
Mailing cost-Order of Possession	10.78
Filing Fee (application for Order of Possession)	100.00
FOB replacement cost	150.00
Unpaid Rent-April 2020	2,595.00
Unpaid Rent-May 2020	2,595.00
Unpaid Rent-June 2020	2,595.00
Unpaid Rent-July 2020	2,595.00
Unpaid Rent-August 2020	2,595.00
Loss of Rental Income-September 2020	2,595.00
Loss of Rental Income-October 2020	2,595.00
Administrative Charge for Dispute	525.00
Mattress Cleaning	209.95
Move out Cleaning	284.06
<b>Total Monetary Order Requested</b>	<b>\$20,379.75</b>

The landlord testified that they were notified by the strata of bylaw infractions related the operation of a short-term rental business in the rental unit. Upon finding out, the landlord contacted the tenant, who informed the landlord that they were out of the country, and was renting out the rental unit as a short-term rental.

The landlord testified that they had inspected the rental unit on July 2, 2020, and confirmed that the unit was still being rented out by the tenant without the landlord's permission. The landlord then served the tenant with the 1 Month Notice on July 16, 2020. The landlord served the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection for August 31, 2020, which was not attended by the tenant.

The landlord testified that the tenant had abandoned the rental unit, and failed to leave the rental unit in reasonably clean and undamaged condition. The landlord submitted in evidence a copy of the Notice of Final Opportunity to Schedule a Condition Inspection, a copy of the 1 Month notice, photos of the rental unit, and receipts for their losses.

The landlord testified that the tenant did not pay any rent from April 2020 to August 2020, and is seeking a monetary order for the unpaid rent. The landlord testified that they had the repair the rental unit, and was unable to re-rent the rental unit until November 1, 2020. The landlord is seeking a monetary order for loss of rental income for August 2020 to October 2020.

Lastly, the landlord is seeking recovery of the administrative costs of filing their applications and service of documents for the landlord's applications.

### **Analysis**

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant was given an opportunity to attend a final move-out inspection, but failed to do so. I am also satisfied that the tenant failed to leave the rental unit in reasonably clean and undamaged condition. I find that the landlord submitted receipts and invoices to support the losses claimed associated with the tenant's contravention of the *Act*. Accordingly, I allow the landlord's claims for cleaning, repairs, and replacement of the missing items.

Section 37(2)(b) of the *Act* requires that the tenant "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." I am satisfied that the tenant failed to return the FOB and keys for the rental unit to the landlord, and allow the landlord's claim for the locksmith fee and replacement of the FOB.

**Section 26** of the *Act*, in part, states as follows:

***Rules about payment and non-payment of rent***

***26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent***

I am satisfied that the tenant failed to pay rent from April 2020 to August 2020, and did not have the right to withhold any rent for this period. Accordingly, I allow the landlord a monetary order for unpaid rent for this period.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary losses, as is required by section 7(2) of the *Act*. I find that the landlord had made reasonable efforts to clean and repair the rental unit and find a new tenant, but despite their efforts, was unable to fill the vacancy until November 1, 2020 due to the tenant's failure to leave the rental unit in reasonably clean and undamaged condition, as well as give proper notice. On this basis, I allow the landlord's application to recover the lost rental income for September and October 2020.

I find that this Application has merit and the landlord is entitled to recover the fee for filing fee paid for this Application. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the landlord's previous application related to the 1 Month Notice, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for that application. The landlord must bear the cost of that filing fee.

I note that the landlord had also applied to recover the costs of mailing and other administrative costs associated with the filing of this application and service of tenancy related documents. I note that the landlord is only entitled to recover the cost of the filing fee, and not other costs associated with the filing of an application or serving of documents on the tenant. Accordingly, I dismiss the landlord's claims for mailing costs without leave to reapply. I also find that the landlord is not entitled to recover the costs of hiring an agent to deal with the filing of a dispute, and I therefore dismiss the landlord's claim to recover the administrative charge without leave to reapply.

A security deposit of \$1,297.50 is being held for this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's security deposit plus applicable interest in satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the

period of this tenancy, \$4.78 is payable as interest on the tenant's security deposit from when the security deposit was paid, until the date of this decision, March 10, 2023.

### **Conclusion**

I issue a Monetary Order in the amount of **\$18,527.36** in the landlord's favour for the monetary orders granted in the table below:

<b>Item</b>	<b>Amount</b>
Bedding & kitchenware	\$230.12
Kitchenware	25.13
Repairs	553.88
Locksmith for rekeying of front door	111.50
Filing Fee (this application)	100.00
FOB replacement cost	150.00
Unpaid Rent-April 2020	2,595.00
Unpaid Rent-May 2020	2,595.00
Unpaid Rent-June 2020	2,595.00
Unpaid Rent-July 2020	2,595.00
Unpaid Rent-August 2020	2,595.00
Loss of Rental Income-September 2020	2,595.00
Loss of Rental Income-October 2020	2,595.00
Mattress Cleaning	209.95
Move out Cleaning	284.06
Less Security Deposit Held plus applicable interest	-1,302.28
<b>Total Monetary Order</b>	<b>\$18,527.36</b>

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the landlord's application without leave to reapply.

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: March 10, 2023