



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1328526 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent of \$3,425.00;
- compensation of \$2,500.00 for monetary loss or other money owed;
- a monetary order of \$4,090.00 for damage or compensation under the Act; and
- recovery of their \$100.00 Application filing fee.

The Tenant and an agent for the Landlord, D.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. Due to the complex nature of the Landlord's Application, there was not enough time in the first hearing to review all of their claims. As a result, the hearing was adjourned and then reconvened at a later date. However, the Tenant did not attend the reconvened hearing and there was no notice provided by the Tenant to the Residential Tenancy Branch ("RTB") as to why she was not present.

Two witnesses, one for the Landlord, S.C. ("Witness"), and one for the Tenant, S.M., were also present and available to provide affirmed testimony. During the hearings, the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing and the Parties' respective evidence back and forth. Section 59 of the Act and Rule 3.1 state that each

respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on July 9, 2022. He said that everything he uploaded to the RTB was contained in that package. The Agent provided a Canada Post tracking number as evidence of service. I checked the Canada Post package tracking website and discovered that the Agent's package was re-routed to the Tenant's new address and was delivered on July 22, 2022. However, the Tenant denied having received this package.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Agent served the Notice of Hearing documents and evidence to the Tenant on July 22, 2022, as set out in the Canada Post website.

I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent and review his evidence.

The Agent also said that he did not receive anything from the Tenant in response to his Notice of Hearing service. The Tenant said she had served the Agent with her evidentiary submissions via Canada Post registered mail on March 1, 2023. The Tenant provided a Canada Post tracking number as evidence of service. I checked the Canada Post package tracking website and discovered that the package was not picked up and was returned to the sender. As noted above, where a package is deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. I, therefore, find that the Tenant served the Agent with her evidence on March 6, 2023. As a result, I considered the evidence that was presented to be by the respective Parties' in making this Decision.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on November 1 , 2021, with a monthly rent of \$1,800.00, due on the first day of each month. The Tenant said she paid the Landlord a security deposit of \$900.00, and no pet damage deposit. The Agent denied that the Landlord had received this security deposit from the Tenant. As it is not an issue before, me, I make no finding on whether this deposit was paid or not.

The Parties have applied for dispute resolution claiming against each other in numerous prior files.

#1 MONETARY ORDER FOR UNPAID RENT → ~~\$3,425.00~~ \$1,800.00

In the hearing, the Agent said that this claim includes \$1,800.00 for unpaid rent, and the \$100.00 Application filing fee and the approximately \$1,525.00 (\$1,529.72) that the Landlord was awarded for electricity owed by the Tenant from a prior hearing.

The Application filing fee is determined at the end of the Decision, based on a party's degree of success in their application. The \$1525.00 has already been awarded by this Tribunal, and it is up to the Landlord to enforce that Order separately. As such, I will consider the remaining claim of \$1,800.00 in unpaid rent for this matter.

In this regard, the Agent said the following about his claim for unpaid rent:

[The Tenant] moved in on November 1, 2021, and abandoned it on May 17, 2022. She never paid one penny of [electricity].... When her power got turned off, she just abandoned it. She made a huge mess, made the water as an excuse. She gave no notice she was leaving. The power was disconnected on May 15.

Her [electricity] was disconnected on her, and I had to make emergency provisions, and she left it a disaster. She said she was coming back in June and she never came back. She said in July, too, but never came back. I waited until July until I was sure she was not coming back. She locked me out. If I tried to go in, she would say I was trespassing. I did not have a set of keys, because she

had changed the locks without my knowing,. And she would refuse us entry every time I tried to inspect, even though I gave formal notice.

I asked the Agent what rent was due, and he said:

June and July are due, but just June, since I can't amend my claim for no notice. Two months are due. She just disappeared – we couldn't enter the cabin or do anything. She said she was coming back in an email. 'I'll be back to hook up the cabin'. But I'm just claiming June, because I didn't amend the Application to claim for July.

The Tenant responded:

Under the Two Month Notice, I am allowed one month compensation, but I had paid my rent in May. And I did had to leave the property on May 17, because there was no power and no water.

The Agent said:

The Two Month Notice – on the file – was in effect for June 1. She disputed that [through the RTB dispute resolution process]. But she moved out before it came to a hearing. So it was just cancelled, because the hearing that was scheduled for that issue was cancelled, because she had moved out of the unit.

I asked the Agent if the Tenant had paid rent for May, and considered her rent for June to be free. He said: "She never accepted that notice, and she didn't give any notice that she was going to leave - she just up and left. She tried to say she had accepted it later."

The Parties advised me of past hearings regarding a Two Month Notice to End the Tenancy for Landlord's Use, dated November 24, 2021 ("Two Month Notice"). This Notice was cancelled and declared of no force or effect by another arbitrator on March 28, 2022.

#2 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$2,500.00

The Agent explained that this claim is for cleaning and repairs after the Tenant vacated the residential property. The Agent testified:

This is where [the Witness] comes in. I paid him cash. I gave him – the cabin was

absolutely destroyed. There was old food in the fridge, garbage bags all through the house. It was not cleaned once since she moved in there. Broken window coverings. Windows had kids' hand prints, dirt and filth.

[The Witness] was there when we inspected before she moved in and when we did the move out inspection. I paid him \$2,500.00 and it took him five days to clean up the mess – I paid him \$500.00 for supplies. And he spent another five days to fix it; he worked for two weeks. The mess and destruction was beyond anything I've ever seen.

The Tenant responded:

I want to get [the Agent] to testify as to the square footage. I admit the place was a mess, but there was no water on the property and I was limited to stay. I had been asking him to return the water for quite some time.

The Tenant acknowledged that she had not paid for the electricity, which ran the well pump through her unit, and resulted in the power and the water being shut off. She also said that the rental unit is approximately 500 square feet in size, which the Agent did not dispute.

#3 ORDER FOR COMPENSATION UNDER THE ACT → \$4,090.00

This part of the claim took place in the reconvened hearing, to which the Tenant did not attend. As such, there is no testimony or documentary evidence noted from the Tenant from here on in the Decision.

A. ELECTRICIAN → \$1,400.00

In the hearing, in answer to why the Landlord needed an electrician, and why the Tenant should pay for it, the Landlord said:

I had uploaded an invoice; it was from [an electrician firm]. I had to call them to make an emergency trip, because [the Tenant] refused to pay one penny of [electricity]. I had sent her all the disconnection notices.

It was acknowledged that there was one other thing running off that account, which I was responsible for. It runs the well pump like any rural cabin – costs

about \$20.00 a month to run it. Some of the other tenants have water coming off of that. I had to get a generator plug to ... because she wouldn't pay [electricity]. [The electrician's invoice] is dated May 19, 2022. It took them about a week to generate the invoice for \$900.00 in labour and \$473.00 in materials. This is \$1,323.27 plus GST or \$1,493.00 I rounded it off to \$1400.00.

I provided [the Tenant] with the invoice and [the Witness] was with me and he witnessed this – I have the invoice in front of me.

This charge was for emergency repairs to the rental unit in the form of an emergency generator, because the electricity was shut off and the well pump is run from this unit. As a result, none of the other suites on the property had water, either, because the Tenant neglected to pay for the electricity.

I asked the Agent if he could have avoided the cost of the generator installation, if he had paid the electricity bill, which he could later claim from the Tenant through the RTB. The Agent said;

I couldn't afford it. I paid \$800.00 on her bill to keep it running. She paid nothing; we weren't getting any revenue, and I couldn't afford to keep her whole family with power. She was responsible for the cost and wasn't paying it. She had turned off the breakers for the water system for other tenants out of spite. The RCMP suggested that I provide an alternative power source for the well pump – so that's what I did at their recommendation. That account had to be closed, because it affected my credit. I did the best I could – I paid \$800.00 and asked her to bring it to current. She received three formal notices and three notices of disconnection.

The Agent did not submit a copy of the electrician's invoice for this amount. However, page two of the tenancy agreement states that electricity is not included in the rent.

B. USED EMERGENCY GENERATOR → \$400.00

The Witness explained this claim in the hearing, saying:

It was in regard to the well pump. Certain cabins rely on the well pump. It was because the [electricity] was off in [the Tenant's] cabin. The power was disconnected, and there's a control in the cabin there that controls the well pump.

I asked the Witness why should the Tenant be charged for the Landlord's purchase of a

generator? He said:

The [electricity] bill – it shut off the power that supplies the well. It wasn't running, as soon as the power was shut off. We had to rewire a generator to the well.

The Agent did not submit an invoice for the generator to the RTB for this file, but he referred to another file between the Parties in which this invoice was provided.

C. REFRIGERATOR → \$400.00

The Witness explained this claim, as follows:

It wasn't usable; it had stains – the smell from the mould - we couldn't get the smell out. It was unusable. From the rotten food that had stained in there, we were trying to scrape it off – you just couldn't use it.

The Witness said the Agent purchased a used refrigerator through a social media website, which advertises used products.

The Agent said that the refrigerator used by the Tenant was:

...only about two years old. When the power was turned off on [the Tenant], and she abandoned the house, it was full of rotten food. And I think she testified that it was full of rotten food in the last hearing. Everything was broken – the produce drawers, the shelving. There were a lot of damages that were from neglect and the children she had in there. I've never seen so much damage in my life. There was no way to get the rotten food smell out of it.

When I asked the Landlord if he had a receipt or invoice for this purchase, he said it was all done by cash off the social media marketplace. He said:

I don't usually get a cash receipt, but it's the most efficient way to do renovations. I tried to be as thrifty as possible. It equalled the one we were replacing, so I got a good deal on it.

D. STOVE → \$400.00

The Witness explained why the Landlord had to purchase a new stove the hearing, as follows:

Because even the burners – one was missing. There was food in the oven and in the bottom tray. Dishes were thrown in there unwashed. It was missing a rack and I believe the top burner didn't work – you could bake it with the top burner or you couldn't use the bottom burner for the inside of the oven. One of the elements on top was missing. The smell was horrible when you open up the oven door. I had a mask on for a couple days, it was so rancid.

The Agent said: "Everything in there was about two years old. It had gone for a reno at an earlier point. When I went to look at it everything [before the Tenant moved in], it was still in like-new condition."

The Landlord said he bought the stove from the social media marketplace and that he was not given a receipt for the cash he paid for the stove.

E. WASHING MACHINE → \$500.00

The Witness said:

The washer and dryer still had wet clothes, and had formed mould in there. Both machines had damp clothes, so there was a mildewy/mouldy smell. The clothes were thrown in there and never dried - sat in the dark. No matter how many loads of laundry were done, I didn't think the smell would come out of that thing.

The Agent said he purchased another washing machine in the same way he had done with the other appliances, as such, he did not have a receipt or invoice for this item.

F. DRYER → \$500.00

This claim mirrors the last claim, in that the Agent asserts that the Tenant left wet clothes in the dryer, which left the appliance smelling like mould or mildew. The Agent and the Witness determined that they could not eliminate the smell from the appliance, therefore, the rental unit needed a new dryer.

Again, having purchased the used dryer from the social media marketplace, the Landlord did not have an invoice or receipt for this purchase.

G. WINDOW COVERINGS → \$350.00

In the hearing, the Agent said: "Her kids must have destroyed them. They were just

broken. The strings were not working properly.” He also said that the blinds were the same age as the rest of the items in the unit – approximately two years old. The Agent said that he purchased new (used) blinds on the social media site, as before, and for cash. He said he had no receipt or invoice, as per the other purchases.

H. BATHROOM DOOR → \$100.00

The Agent said that there was a hole in the bathroom door that was about five inches around. He said it looked like a punch. The Agent’s evidence mirrored the rest of his submissions, in that he purchased a new (used) door on the social media marketplace, and he did not receive a receipt or invoice from the seller.

I. LOCKS AND KEYS → \$40.00

The Landlord said that the Tenant had changed the locks without the Agent’s permission, and without giving the Agent a copy of the keys. The Agent said that they could not enter the rental unit after they were sure that the Tenant had vacated the premises. The Agent said they had to enter the unit through the bathroom window.

In this case, the Agent said he had a receipt, but not in front of him. He said he bought the new lock and key set from a national hardware chain. However, he did not submit a copy to the RTB.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified in the first hearing, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

#1 MONETARY ORDER FOR UNPAID RENT → ~~\$3,425.00~~ \$1,800.00

Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Tenant claims that she was entitled to a month free at the end of the tenancy, because the Landlord had served her with the Two Month Notice. However, this Notice was cancelled and declared of no force or effect by another arbitrator on March 28, 2022. As a result, I find that the Tenant was not entitled to a free month of rent at the end of the tenancy.

The Landlord has claimed recovery of one month's rent, because the Tenant abandoned the rental unit without Notice, and having changed the locks without the Landlord's permission. Based on the evidence before me, overall, I find that the Tenant owes the Landlord at least one month's rent. As the Landlord has claimed \$1,800.00 in unpaid rent owing, I **award the Landlord with \$1,800.00** from the Tenant, pursuant to sections 26 and 62 of the Act.

#2 COMPENSATION FOR LOSS OR OTHER MONEY OWED → \$2,500.00

The Tenant admitted that she left the place "a mess", which the Agent had to clean up when the tenancy ended. However, while the Agent submitted photographs of the condition of the residential property in another file, he did not submit these photographs to this file. As a result, the Tenant did not know what evidence the Agent intended to rely on in this regard, therefore, I find it would be unfair to consider the photographs from another file. However, I have the testimony of the Agent and the Witness in making my findings.

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on both Parties' evidence, and all the testimony before me, I find that the residential property was left in poor condition – unclean and damaged - by the Tenant when she vacated the property.

I find that \$2,000.00 of labour at \$25.00 an hour means that the Witness worked for 80

hours to clean and repair damage in this unit. The Agent indicated that the Witness worked for two weeks at this, eight hours a day. The Agent did not submit photographs of the residential property to the RTB for this file. However, throughout the hearings, the Agent and the Witness explained the poor condition in which the residential property was left after the Tenant moved out.

However, given the size of the rental unit, I find it somewhat excessive that the Witness would have to work for eight hours a day for ten days to bring the unit into a reasonable state of cleanliness and repair. As such, I award a reduced claim of 40 hours at \$25.00 an hour for a total award of **\$1,000.00**, pursuant to sections 62 and 67 of the Act. I also award the Landlord recovery of **\$250.00** in cleaning and maintenance supplies, as the Landlord did not provide any evidentiary submissions to support the \$500.00 claimed for supplies.

#3 ORDER FOR COMPENSATION UNDER THE ACT → \$4,090.00

A. ELECTRICIAN → \$1,400.00

According to the tenancy agreement, the Tenant was responsible for the cost of electricity for the rental unit. The Agent's testimony is that the Tenant failed to pay this throughout the seven-month tenancy.

Based on the evidence before me, including the lack of evidence to the contrary, I find that the Landlord has provided sufficient evidence on a balance of probabilities to fulfil their burden of proof. I **award the Landlord \$1,400.00** for this claim, pursuant to section 67 of the Act.

B. USED EMERGENCY GENERATOR → \$400.00

Based on the evidence before me overall on this matter, I find that the Landlord had to spend this money, because the Tenant failed to pay the electricity bill. It may not have been fair that the Tenant paid the electricity bill for the water pump, which supplied water to all of the units. However, the Tenant did not raise this as an issue in this hearing, as she did not attend the hearing in which it was addressed.

I find that the Tenant knew that the electricity was necessary to operate the well pump and that by failing to pay the electricity bills, she jeopardized the Landlord's business interests in the residential property. I find that because of the Tenant's behaviour, the Landlord incurred the cost of purchasing a (used) generator to power the well pump.

The Landlord did not provide evidence of the cost of the generator, and I find it would be unfair to the Tenant to review evidence from another file for which the Tenant had no notice of for this Application.

However, given the Agent's testimony and that of the Witness, I find that the Landlord has provided sufficient evidence on a balance of probabilities to validate this claim. Accordingly, I **award the Landlord \$400.00** pursuant to sections 62 and 67 of the Act.

C. REFRIGERATOR → \$400.00

I find that the Landlord provided sufficient evidence to establish that the Tenant breached section 37 of the Act by not leaving the refrigerator clean at the end of the tenancy. I find that the Landlord incurred costs to remedy this situation. The Witness tried to clean the refrigerator, but was unable to get the rotten food smell out. I find this forced the Landlord to purchase a replacement refrigerator. I find the Landlord minimized his damages by purchasing a used refrigerator equivalent to the one that had to be replaced.

As a result, I **award the Landlord \$400.00** for this claim, pursuant to sections 37 and 67 of the Act.

D. STOVE → \$400.00

Again, I find that the Tenant breached section 37 of the Act by not leaving the stove reasonably clean at the end of the tenancy. The Landlord incurred the cost of having the Witness try to clean it, but there were pieces missing and an element that did not work. Once again, the Landlord failed to provide an invoice or receipt for this purchase; however, I find it to be common knowledge that receipts are not common place in the purchase and sale of used commodities. As such, and as this is an undisputed claim, I find that the Landlord provided sufficient evidence to prove this cost on a balance of probabilities. I **award the Landlord \$400.00** from the Tenant pursuant to sections 37 and 67 of the Act.

E. WASHING MACHINE → \$500.00

Again, I find that the Tenant breached section 37 of the Act by not leaving the washing machine reasonably clean and in good repair. The Landlord incurred the cost of having the Witness try to clean it, but they determined that it would be impossible to get the mildewy odour out of the appliance. As a result, the Landlord had to purchase a new washing machine.

I **award the Landlord \$500.00** from the Tenant for this undisputed claim, pursuant to sections 37 and 67 of the Act.

F. DRYER → \$500.00

I find that the Tenant breached section 37 of the Act by not leaving the dryer reasonably clean. The Landlord incurred the cost of having the Witness try to clean it, but they determined that it would be impossible to get the mildewy odour out of the appliance. As a result, the Landlord had to purchase a new dryer, which I find he did in a way to minimize his costs.

I **award the Landlord \$500.00** from the Tenant for this undisputed claim, and pursuant to sections 37 and 67 of the Act.

G. WINDOW COVERINGS → \$350.00

Given the evidence before me on this matter, and without evidence to the contrary, I find that the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities for this claim. I, therefore, **award the Landlord \$350.00** for this claim, pursuant to sections 37 and 67 of the Act.

H. BATHROOM DOOR → \$100.00

Once again, I find that the evidence before me is undisputed and reasonable, in that the Landlord sought a less expensive way to remedy damage he found in the rental unit after the Tenant had vacated the suite. I find the evidence before me in this matter indicates that the Landlord fulfilled its burden of proof on a balance of probabilities. As a result, I **award the Landlord \$100.00** for this claim, pursuant to sections 37 and 67 of the Act.

I. LOCKS AND KEYS → \$40.00

Ordinarily, a landlord is responsible for changing the locks of a rental unit for a new tenant, therefore, it would be unfair to charge the previous tenant, pursuant to the legislation. However, in this case, the undisputed evidence before me is that the Tenant changed the lock and key set without the Agent's permission.

Section 31 of the Act states that a tenant must not change locks or other means that give access to his or her rental unit, unless the landlord agrees in writing to, or the

Director has ordered the change. There is no evidence before me that the Tenant had such permission or order to change the locks. As such, I find that the Tenant breached section 31 of the Act, and caused damage or loss for the Landlord to repair. I find that the Agent had no other choice than to break into his own property in order to repair this damage. Accordingly, I **award the Landlord \$40.00** for this claim, pursuant to sections 31, 37, and 67 of the Act.

Summary

<u>Awards</u>	<u>Description</u>
\$1,800.00	-unpaid rent,
\$1,250.00	-cleaning and repair work – labour and supplies,
\$1,400.00	-electrician fees to install used generator,
\$ 400.00	-emergency used generator,
\$ 400.00	-used refrigerator,
\$ 400.00	-used stove,
\$ 500.00	-used washing machine,
\$ 500.00	-used dryer,
\$ 350.00	-used window coverings,
\$ 100.00	-used bathroom door,
<u>\$ 40.00</u>	-replaced lock and key set.
<u>\$3,290.00</u>	Total Award

Given the Landlord's success in the Application, I also award them recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** of **\$3,390.00** from the Tenant, pursuant to sections 67 and 62 of the Act.

Conclusion

The Landlord is successful in their Application, as the Agent provided sufficient evidence to meet the Landlord's burden of proof for these claims on a balance of probabilities.

I grant the Landlord a **Monetary Order** of **\$3,390.00** from the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 05, 2023

Residential Tenancy Branch