



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

This hearing commenced on February 13, 2023, and was adjourned to April 24, 2023 to allow both parties to complete their submissions and be heard.

Both parties attended the reconvened hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

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

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to recovery of their filing fee?

### **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 tenancy began on November 16, 2020, with monthly rent set at \$2,009.70 when the tenancy ended on or about May 26, 2022. The landlord still holds a security deposit of \$990.00 for this tenancy.

The landlord is claiming the following losses associated with the end of this tenancy:

<b>Item</b>	<b>Amount</b>
LED Lights & Parts-June 11, 2022	\$761.54
Handyman Invoice-June 11 & 12, 2022	5,565.00
Handyman Invoice-Furnace Inspection, December 28, 2021	294.00

Handyman Invoice-Furnace Inspection, February 23, 2022	367.50
Unpaid Rent May-July 2022	6,029.10
<b>Total Monetary Order Requested</b>	<b>\$13,017.14</b>

The landlord submits that the tenant failed to give the landlord proper notice to end the tenancy before vacating the rental unit some time in May 2022. The landlord testified that the tenant did not pay any rent for May 2022, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 5, 2022 for an effective date of May 15, 2022. The tenant disputed the 10 Day Notice on May 10, 2022, and vacated the rental unit before the hearing scheduled for June 17, 2022. The landlord is seeking a monetary order for unpaid rent for the month of May 2022.

The landlord confirmed that no move in or move out inspection reports were completed for this tenancy as they were unaware of their obligations to do so. The landlord submits that they did document the condition of the suite by taking pictures. The landlord testified that they attempted to reach out to the tenant to schedule a move-out inspection for May 30, May 3, June 1, and June 2, 2022, but the tenant declined. The landlord testified that they provided the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection for June 10, 2022 between 6:00p.m. and 8:00p.m. The landlord included a copy of the Notice in their evidentiary materials. The landlord testified that the tenant did not attend on June 10, 2022, nor did they send an agent.

The landlord testified that the tenant vacated the rental unit and failed to leave the rental unit in reasonably clean and undamaged condition. The landlord submitted photos of the suite taken after the tenant had moved out, as well as the invoices for the repairs and handyman services. The landlord submits that the tenant left a considerable amount of belongings and garbage behind, which the landlord had to dispose of. The landlord submits that the tenant also removed lightbulbs and fixtures in the suite, leaving wires hanging. The landlord testified that the tenant also did not clean the suite, leaving food inside the refrigerator and freezer.

The landlord submits that the damage caused by the tenant included melted plastic on the stovetop, which required the landlord to replace as the melted substance could not be removed. The landlord submits that the tenant also failed to clean the entry way, which was covered with moss.

The landlord testified that due to the condition of the rental unit, they were not able to advertise and show the rental unit to prospective tenants until June 17, 2022. The landlord submitted a copy of the posting in their evidentiary materials. The landlord was able to find a new tenant on July 5, 2022, who moved in on August 1, 2022, and is now paying \$2,700.00 per month. The landlord is seeking a monetary order for loss of rental income for the months of June and July 2022.

The landlord is also seeking reimbursement of the cost of hiring a contractor to inspect the furnace. The landlord testified that they had to call a contractor to attend twice due to the tenant's complaints, but the contractor had confirmed that the furnace was working properly.

In cross examination, the tenant's advocate questioned why the landlord's invoices showed different quantities in the invoice for the LED lights/parts invoice, while the handyman invoice references supply and installing of three light fixtures. The landlord responded that these were two separate invoices that referenced separate repair as the handyman was unable to deal with all the outstanding issues. The landlord testified that they had only replaced the damaged items.

The tenant also questioned the landlord's statement that nobody had attended upon move-out. The tenant provided an email dated May 31, 2022 from AT, who assisted the tenant with the move-out. AT stated that they attended in the afternoon of May 22, 2022, and at 3:00 p.m., a woman came from the main entrance to ask if they were almost done. AT stated that they informed the woman they would be done at 4:30 p.m., to which the woman responded that they were going to change the locks at 6:00 p.m.

The tenant testified that they had to replace three light fixtures as they had difficulty removing the bulbs from the fixtures. The tenant stated that they had left the lights wrapped in a zippered bag in the rental unit.

The tenant denies that the photos provided were taken at the beginning of the tenancy, and notes that no move-in inspection was performed to document the actual condition of the suite.

The tenant also argued that the landlord had not provided sufficient evidence to support that the tenant had damaged the glass stovetop to the extent that replacement was necessary.

The tenant argued that they should not have to reimburse the landlord for the furnace inspections as they had a legitimate concern about the heating in the rental unit, and did not have personal access to where the furnace was. The tenant argued that their request to investigate and fix the matter was a reasonable one. The tenant noted the deterioration of the relationship between the landlord and them, which resulted in an incident in April 2022 where the landlord had called the police. As a result, the tenant was issued a police issued Undertaking on April 25, 2022 which notes an offence of "uttering threats". The Undertaking contained a condition that the tenant must not go to the rental address. The tenant provided a copy of the Undertaking in their evidentiary materials. The tenant testified that following the issuance of the Undertaking, they could not return to the residence. The tenant submitted correspondence from their lawyer on June 30, 2022 confirming that the charges have been dropped.

The tenant argued that no specific term was specified on the tenancy agreement, and therefore the tenancy should have been considered a month-to-month one, which

required one month's notice. The tenant notes that the landlord was aware that the tenancy was over on May 22, 2022 as AT was there to assist with the move, and had interacted with the landlord. The tenant also submitted email correspondence from the landlord's counsel on May 26, 2022 confirming receipt of the tenant's forwarding address, and that "the tenants have vacated the premises and that the landlord is able to regain possession immediately".

The tenant's advocate argued that the landlord had a duty to mitigate their losses, and notes that the landlord had increased the rent to \$2,700.00 from \$2009.70, which was a significant increase. The tenant's advocate that the landlord may have re-rented the unit sooner if they did not increase the requested rent by such a substantial amount. The landlord argued that they required a week to clean before they could advertise the suite for rent.

The tenant disputed the landlord's claim for the power washing of the entry, noting the rainy climate, and that the area showed typical wear and tear rather than neglect.

Lastly, the tenant argued that the landlord's handyman had charged an exorbitant amount for dumping and cleaning as a comparable company provided much lower estimates. The tenant argued that the landlord should have obtained competing quotes to mitigate the losses claimed.

### **Analysis**

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

Before I consider the landlord's monetary claims for losses and unpaid rent, I must consider how this tenancy had ended. I note that the written tenancy agreement does reference a "fixed-term" without a defined date for the end of this term. In the absence of a date, I consider this tenancy as a month-to-month tenancy as it would be unconscionable to bind the tenant to an indefinite term for this tenancy.

Section 44 of the *Residential Tenancy Act* states the following:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
  - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c) the landlord and tenant agree in writing to end the tenancy;
  - (d) the tenant vacates or abandons the rental unit;
  - (e) the tenancy agreement is frustrated;
  - (f) the director orders that the tenancy is ended;
  - (g) the tenancy agreement is a sublease agreement.
- (2) [Repealed 2003-81-37.]
- (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 45(1) deals with a Tenant's notice in the case of a periodic tenancy:

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

**Residential Tenancy Policy Guideline 34** states the following about a Frustrated Tenancy:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

*A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.*

*The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.*

In this case, it is undisputed that on April 25, 2022, the tenant was issued a Police Undertaking with a specific condition that they must not go to the address where the rental unit is located. The tenant was also ordered to attend court on May 25, 2022. Although this Police Undertaking did prevent the tenant from attending on the premises, I do not find that this constituted a frustrated tenancy for the following reasons.

I find that the condition imposed was not a permanent one. Although the condition did prevent the tenant from returning to the premises, the tenancy agreement could still be fulfilled upon the termination or variation of this condition. In this case, the matter was eventually stayed by the courts, and the undertaking was cancelled. Prior to the stay of proceedings, the tenant had the option to request that a Judge or Justice vary the conditions of this Undertaking, but there is no evidence to support that any attempts were made. Regardless, I do not find that the condition imposed was a permanent one, and therefore the contract was not frustrated. The tenancy could have continued after the condition was lifted or changed.

In the case of a month-to-month tenancy, the tenant would have been required to give the landlord notice in accordance with section 45 (1) of the *Act* as noted above. The tenant did not give the landlord at least one month's notice in writing. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. No previous applications for dispute resolution have been filed by the tenant in regards to this tenancy. The evidence is clear that the tenant did not comply with the *Act* in ending this, and I therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*.

The evidence of the landlord is that they were unable to re-rent the rental unit for the months of June 2022 and July 2022. Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

*"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation<sup>2</sup>. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.*

*Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is*

*located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.”*

I note that the landlord was able to re-rent the rental unit for August 1, 2022, but for over 34% higher rent. Although I am satisfied that the tenant failed to provide sufficient notice to end the tenancy, which would have impacted the landlord's ability to find a new tenant for June 2022, I am not satisfied that the landlord had sufficiently mitigated their losses for July 2022. As noted above, the landlord has an obligation to mitigate their losses. I am not satisfied that the landlord had established that their inability to fill the vacancy for July 2022 was due to the tenant's actions rather than due to the substantial increase in rent. Accordingly, I dismiss the landlord's claim for loss of rental income for July 2022. As I am satisfied that the tenant did not give sufficient notice to end this tenancy, I allow the landlord's claim for loss of rental income for June 2022.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

As noted in Residential Policy Guideline #17:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:*

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

*A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;*
- and*



- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's claims.

1) Reimbursement for furnace inspections

In consideration of the evidence before me, I find that the tenant had genuine and reasonable concerns about the heating in their rental unit, and did not have access to inspect the furnace themselves. I find that the tenant's requests to be reasonable, and I do not find that the evidence supports that the tenant's requests or concerns were out of malice or done with the intention to cause difficulty, loss, or harm. I am not satisfied that there was an agreement for the tenant to reimburse the landlord for these call outs.

As I am not satisfied that the losses claims related to the furnace inspections were associated with the tenant's contravention of the Act or tenancy agreement, I dismiss these claims without leave to reapply.

2) Failure of tenant to leave the rental unit in reasonably clean condition.

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.

Although I acknowledge that the tenant was bound by the conditions of the Police Undertaking that prevented the tenant from returning to the rental unit as of April 25, 2022, the tenant still had the option to send someone to clean the suite on their behalf. Although the tenant noted that it was difficult for them to find someone, I do not find that the tenant provided sufficient evidence to support that there were extenuating circumstances that prevented them from hiring someone to clean and dispose of the belongings left behind. As noted earlier, I did not find the tenancy to be frustrated, and therefore the tenant was still under the obligation to return the rental unit to the landlord in reasonably clean condition. I find that the tenant failed to fulfill their obligations, and as a result the landlord had to hire someone to clean the rental unit, and dispose of the belongings left behind by the tenant.

The invoice presented by the landlord shows that the landlord had paid a handyman \$1,100.00 to clean the rental unit, and an additional \$1,500.00 for garbage removal and dumping. Although the tenant had questioned the reasonableness of these claims, I note that the tenant did not provide convincing evidence to support that these claims were unreasonably high. In fact, I find the landlord's explanation to be a reasonable one, which was to clean and prepare the rental unit in the most efficient and timely manner possible in order to prepare

the unit for the next tenant. Accordingly, I find the landlord's claims for cleaning and disposal to be supported and justified, and I allow the landlord a monetary order for these claims.

### 3) Pressure Washing

I note that although section 37 of the Act requires that the tenant leave the rental unit in reasonably clean condition, the Act does not require a tenant to maintain the common areas of the residence or the exterior entranceway. Although I recognize that the landlord felt that the entrance area was covered in moss, and the area did not appear clean, I do not find that this evidence supports that the condition of this area was due to the tenant's contravention of the Act or tenancy agreement. As the exterior of the home is exposed to various weather and outside conditions, I am not satisfied that the condition of this outside space exceeds regular wear and tear. I do not find that the tenancy agreement includes a clause where the tenant had agreed to pressure wash or clean this area, nor am I satisfied that there was an agreement between the parties that the tenant would be responsible for pressure washing. Accordingly, I dismiss the landlord's claim for pressure washing without leave to reapply.

### 4) Replacing damaged stovetop.

Although the landlord submitted photos to show the "before" and "after" condition of the rental unit, it is undisputed that the landlord failed to provide completed move-in and move-out inspection reports for this tenancy. In light of the disputed testimony and claims, I find that the landlord's evidence falls short in proving that the damage to the stove top exceeded wear and tear, and required a replacement of the stovetop. As noted earlier, the landlord bears the responsibility of demonstrating entitlement to a monetary award, and also a duty to mitigate their losses. In this case, I am not satisfied that the stovetop had to be replaced completely because of damage caused by the tenant. Accordingly, I dismiss the landlord's claim for stovetop replacement without leave to reapply.

### 5) Damaged & Missing Light Fixtures

In this case, the tenant admitted to removing some of the light fixtures, specifically three fixtures in the suite. I note that the landlord had included two invoices in support of their claims. The handyman invoice dated June 11 and 12, 2022 include a claim of \$1,050.00 for replacing three breakers, and supplying and installing three light fixtures. The landlord included another invoice dated June 11, 2022 from a different contractor for mounting of what appears to be different fixtures.

As noted above, the burden of proof falls on applicant to support their claims. In light of the disputed testimony, I find that the landlord failed to establish that the

separate invoice dated June 11, 2022 relates to the fixtures removed by the tenant. Accordingly, I dismiss the landlord's claims reflected on that separate invoice.

I am satisfied that the tenant did remove three fixtures, and failed to properly reinstall them at the end of this tenancy. While I recognize that the tenant was bound by the police undertaking, the tenant still had the obligation to ensure that the light fixtures were returned to the landlord in the original condition. The tenant had the option to hire someone to do so, but did not. Accordingly, I allow the landlord's claim for the electrical repairs as noted in the handyman invoice dated June 11 and 12, 2022.

As the landlord's application contained some merit, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the monetary awards 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, \$7.56 is payable as interest on the tenant's security deposit from November 17, 2020, when the deposit was originally paid, until the date of this decision, May 23, 2023.

### **Conclusion**

I issue a Monetary Order in the amount of \$6,954.34 in the landlord's favour under the following terms which allows for the following monetary awards:

<b>Item</b>	<b>Amount</b>
Handyman Invoice-June 11 & 12, 2022	1,050.00
Cleaning	1,100.00
Garbage disposal	1,500.00
5% GST for above items	182.50
Unpaid Rent -May 2022	2,009.70
Loss of Rental Income-June 2022	2,009.70
Recovery of Filing Fee	100.00
Less Deposit plus applicable interest	<b>-997.56</b>
<b>Total Monetary Order</b>	<b>\$6,954.34</b>

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 remaining claims 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: May 23, 2023

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Residential Tenancy Branch