



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding RIMCHER INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNRL MNDCL-S FFL

### **Introduction**

This dispute relates to the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- \$2,035 for damages and compensation,
- Retain security deposit towards money owed,
- Filing fee.

The agent, CC (Agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the Agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 26, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The Agent testified that the Hearing Package was served via registered mail and provided tracking number RN 622 319 614 CA. The Canada Post registered mail tracking website shows that the Hearing Package was mailed on September 27, 2022, and was signed for and accepted by the tenant on October 1, 2022. I find the tenant was duly served as of October 1, 2022, the date that the tenant signed for and accepted the Hearing Package.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

### **Rule 7.3 Consequences of not attending the hearing**

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

### Preliminary and Procedural Matter

The landlord confirmed the email addresses of both parties during the hearing. The landlord was advised that the decision would be emailed to both parties.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Should the filing fee be granted?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on November 1, 2020. Monthly rent was \$1,750 per month and due on the first day of each month. The tenant paid a security deposit of \$850, which the landlord continues to hold. The interest on the security deposit will be calculated later in this decision.

The Agent stated that the tenant provided one-month's written notice that they would be vacating on August 31, 2022.

The landlord's \$2,035 claimed is as follows:

1. Dump fee, trucking and labour, \$260
2. Painting and repairing walls and cupboards, \$560
3. Cleaning, \$240
4. 2 weeks loss of income, \$875
5. Filing fee, \$100

Item 1 is for \$260 for a dump fee, trucking and labour costs related to what the Agent describes is lots of junk and personal item of no value left behind by the tenant in the rental unit after vacating on August 31, 2022. The receipt for the dump fee was actually

\$50, and not \$60 as claimed. The Agent was advised that the maximum amount would be \$50 based on that receipt.

Two texted photos support that junk was left over by the tenant that required disposal. The Agent also stated that the tenant left a mattress behind, which also required disposal. In terms of the trucking and labour costs, the Agent stated that the park owns the truck, and staff were paid \$100 per direction including labour to pack the truck and unload the truck at the dump. In addition, gas for the truck was mentioned. Other items left behind described by the Agent were a barbeque, cans, bed frame, plastic organizer, clothes, wood pieces and more junk in the shed.

Item 2 is for \$560 for painting, repairing walls and cupboards. The Agent submitted the Condition Inspection Report (CIR) in evidence in support of all of the first 3 items, which supports the amounts claimed. The CIR indicates there was damage by the tenant and the Agent stated that none of the damage was reasonable wear and tear.

The Agent explained that the park manager spent a total of 16 hours painting and repairing the rental unit walls after the tenant vacated at \$35 per hour. The Agent stated that the manufactured home was renovated prior to the tenant moving in.

Item 3 is for cleaning costs of \$240. The Agent presented an invoice for \$567.01 and was advised that the claim could not be increased at the hearing as it would be against the Principles of Natural Justice. The cleaning receipt is dated September 15, 2022 and indicates that cleaners attended on both September 13 and 14, 2022 as cleaners were not available sooner than that.

Item 4 is for 2 weeks of lost income of \$875. The Agent testified that due to the condition of the rental unit and cleaners not being available until September 13 and 14, 2022, that the landlord was unable to re-rent the rental unit before September 15, 2022, and is seeking \$875 in loss of rent. The Agent stated that a new tenant moved in on September 15, 2022, and is paying the same monthly rent as the tenant so only \$875 was received for September 2022.

The Agent was asked then they first advertised the rental unit for re-rent and the Agent was unable to provide a date. The Agent also stated that they do not normally have to advertise due to the demand for rentals in the area.

### Analysis

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

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

Section 37(2)(a) of the Act applies and states that a tenant must leave the rental unit clean and undamaged, except for reasonable wear and tear. I accept the Agent's undisputed testimony that the tenant failed to remove their junk from the rental unit and failed to leave the rental unit in a reasonably clean condition. Therefore, I find the tenant breached section 37(2)(a) of the Act.

**Item 1** – I find the tenant is liable for the \$50 dump fee due to breaching section 37(2)(a) of the Act. I also award the \$200 truck, labour, and gas fee as I find all the junk left behind, including a mattress, required that labour to be disposed of and that none of the items had any value. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$250** for this item.

**Item 2** – I find the Condition Inspection Report (CIR) and testimony support that the landlord had to spend 16 hours at \$35 per hour to repair and repaint damaged walls and cupboards. Based on the undisputed evidence, and the breach described in item 1, I award the landlord **\$560** as claimed for this item.

**Item 3** – Although the Agent presented an invoice for \$567.01, I find the landlord did not amend their application formally and cannot increase the monetary claim at the hearing which I find would be prejudicial to the tenant. The tenant has the right to know the entire claim at the time they are served with the application and in this matter, I find the maximum award for item 3 is \$240 as claimed. Therefore, based on the breach described in items 1 and 2, I award the landlord **\$240** for cleaning costs and dismiss any amount higher as it was not properly claimed, without leave to reapply.

**Item 4** – Given that the landlord did not advertise the rental unit and that section 7 of the Act requires the landlord to attempt to minimize their damages or loss, I find the landlord has failed to meet the burden of proof for this item. I find there is insufficient evidence such as emails from other cleaners indicating that they were not available until September 13 and 14 and that reasonable due diligence could have resulted in such evidence being presented. Therefore, I dismiss this item in full without leave to reapply,

due to insufficient evidence. There was no evidence before me to explain why the manager could not have cleaned the rental unit as they repaired the rental unit.

- Should the filing fee be granted?

As the landlord's claim had merit, I grant the landlord **\$100** for the filing fee under section 72 of the Act.

- What should happen to the tenant's security deposit under the Act?

The tenant's security deposit is \$875 and under the Act has accrued interest of \$7.39 for a total security deposit/interest of \$882.39. I find the total monetary claim established by the landlord is **\$1,150** comprised of \$250 for item 1, \$560 for item 2, \$240 for item 3 plus the \$100 filing fee.

Under section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit/interest of \$882.39, I grant the landlord authorization to retain the full \$882.39 to offset the \$1,150 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenant to the landlord in the amount of **\$267.61**.

### Conclusion

The landlord's application is mostly successful. The landlord has established a total monetary claim of \$1,150. The landlord has been authorized to retain the tenant's full security deposit/interest of \$882.39, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$267.61. The landlord

must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be sent by email to both parties. The monetary order will be sent by email to the landlord only for service on the tenant.

The tenant is cautioned that they could be held liable for all costs related to enforcement of the monetary order including court costs.

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: June 7, 2023

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Residential Tenancy Branch