



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

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

1. A Monetary Order to recover money for unpaid rent under Sections 26, 46 and 67 of the Act;
2. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security deposit under Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, his support and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package and his evidence on September 2, 2022 by Canada Post registered mail (NoDRP package). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt. I find that the Tenant was deemed served with

the NoDRP package five days after mailing them on September 7, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant stated she served the Landlord with her evidence by leaving a copy on the Landlord's doorstep on April 30 or May 1, 2022. The Tenant did not provide a proof of service document for this service. The Landlord stated they never received anything.

Residential Tenancy Policy Guideline #12- Service Provisions states that where proof of service is required, the person who actually served the documents must provide a signed statement with the details of how the documents were served, and should include:

*the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

The Tenant could not substantiate the service of her evidence was effected, so I find the Tenant's evidence was not served on the Landlord. I decline to refer to the Tenant's evidence uploaded on the RTB website.

#### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

#### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on April 1, 2022. The fixed term was to end on December 31, 2022; however, the tenancy ended on August 4, 2022. Monthly rent was \$1,700.00 payable on the last day of each month. A

security deposit of \$1,000.00 was collected at the start of the tenancy and the Landlord returned \$500.00 of the security deposit and retained \$500.00.

The tenancy agreement states:

**Length of Tenancy**

Start date: April 15/2022

End date: December 31/2022 (may renegotiate if suite rental is needed longer)

**Tenant's Responsibilities:**

Notify landlord immediately of any repairs needed

**Landlord/Owner's responsibilities:**

Keep all appliances and unit in proper working order.

In bold print at the bottom of page 2, the tenancy agreement states:

**"\*Tenant must give 30 days' notice of moving".**

The Tenant told the Landlord she was leaving before the end of her fixed term. The Landlord testified that they reached a verbal agreement with the Tenant that they would keep \$500.00 of the security deposit for the damage that was done, the Tenant leaving on short notice, and for the bills which were still to come in for payment. A short time later, the Tenant sent an email to the Landlord stating she wanted her full security deposit returned to her.

The Landlord received \$175.00 for the four days the Tenant was in the rental unit in August. The Landlord is seeking the full month's rent in August, the balance owing is \$1,525.00.

The Landlord testified that the shower was a brand-new shower four or five years ago. There was a leak in the corner of the shower, and it caused water damage on the wooden baseboard and outside the shower on the flooring. The Landlord's support said they were shocked when the Tenant called them downstairs about the state of the shower - the shower door was not on the rollers and the shower head was just dangling.

The contractor told the Landlord that the unit split apart due to force, which caused it to not be affixed to the wall securely and making the shower no longer waterproof. The

contractor had to remove the unit, remove the silicone, and re-install it. The total invoice for this work was \$420.00.

The Landlord did a move-in condition inspection, but they neither did an accounting on a written checklist, nor did they provide the Tenant with a copy of any report. The Landlord did not do a move-out condition inspection with the Tenant.

The Landlord received the Tenant's forwarding address when she sent them a registered mail package asking for the return of the balance of her security deposit.

The Tenant testified that the male Landlord agreed that the Tenant only had to pay \$175.00 for the four days she remained in the rental unit in August. The Tenant stated her e-transfer note for the \$175.00 was '\$1,700.00 out of \$1,700.00 for July, and \$175.00 for August 01 to 04.' The Tenant argued that if there was an amount owing, it would have been in the note, and there was no note for an additional amount owing.

On July 10, 2022, the Tenant noticed water seeping outside the shower. The Tenant said the shower door had come off its hinges. She contacted the Landlord's support and she tried to get the shower door back on the hinges. The Tenant stated it was always like that when she lived in the rental unit. When that failed the Landlord's support hung a shower curtain to help stop the water from flowing outside the shower. This also did not help. Two or three weeks later a repair person came in to fix the shower.

The Tenant argued that she was told she would not be accountable for the whole \$400.00 bill. They told her she would only be responsible for half the bill, and this represented reasonable rental wear and tear.

The Tenant said, a lot of the conversations between her and the Landlord occurred in verbal conversations, and she does not have proof of text messages or emails between her and the Landlord.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

## **Unpaid rent:**

Residential Tenancy Policy Guideline #30-Fixed Term Tenancies (PG#30) is intended to help the parties understand issues that are likely to be relevant. PG#30 states:

### **C. ENDING A FIXED TERM TENANCY**

*During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).*  
(emphasis added)

The Tenant is a student and found out in July 2022 that her practicum would not place her in the city of the rental unit because she was not a resident of that city. She spoke to the Landlord about this issue and the Landlord was flexible. The Tenant also ran out of funding and the Landlord and her agreed that the tenancy would end, and the Tenant's last day would be August 4, 2022. The Landlord told her that she would owe \$175.00 for the four days the Tenant would be staying in the rental unit in August. The Tenant paid this amount to the Landlord.

Based on the evidence of both parties, I find the tenancy ended on August 4, 2022, and the Tenant paid the final amount of rent that was owed to the Landlord. The Landlord's claim for compensation for unpaid rent is dismissed without leave to re-apply.

## **Damaged shower:**

### ***Landlord and tenant obligations to repair and maintain***

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

...

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline

states, “*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.*” This guideline must be read in conjunction with Sections 7 and 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord’s tenancy agreement specifies the Landlord’s responsibilities, keep the unit in proper working order, which is in line with Section 32(1) of the Act. The Tenant notified the Landlord about the leaking shower, and the Landlord’s support made attempts to re-hinge the shower door so that it properly rolled in its track. This did not fix the problem, and the Landlord contacted a repair person to fix the leaking shower.

I do not find that the Tenant failed to comply with the Act, Regulation, or tenancy agreement. The tenancy agreement states, the Tenant must “Notify landlord immediately of any repairs needed”, and the Tenant did this. It is the Landlord’s obligation to repair and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

I do not fault the Landlord. They repaired the shower as they are obliged, but I do not find that that is the Tenant’s responsibility. The repairs to the shower are a cost of doing business, and one the Landlord must bear.

The Landlord must return the balance of the Tenant’s security deposit with interest. There will be no doubling of the security deposit as the Landlord applied for dispute resolution claiming against the security deposit pursuant to Section 38(1)(d) of the Act. The date used to calculate interest on the remaining \$500.00 security deposit was April 1, 2022.

The Tenant is entitled to a monetary order totalling \$503.50.

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

### Conclusion

I grant a Monetary Order to the Tenant in the amount of \$503.50. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of 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 Act.

Dated: June 06, 2023

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Residential Tenancy Branch