



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNRL, FFL, MNDCT, MNETC, FFT

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- 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 its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities?

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

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation, or tenancy agreement?

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

### Background and Evidence

JG gave the following testimony. JG testified that the tenancy began on August 1, 2019 and ended on December 2, 2022. The rent of \$2000.00 was due on the first day of each month. JG testified that as part of the tenancy agreement the tenant was responsible for 50% of the utilities. JG testified that the tenant left an unpaid balance of \$314.35 for BC Hydro and Fortis BC. JG testified that the tenant did not vacate the unit on November 30, 2022 as required and overheld the unit for two days. The landlord seeks a pro-rated amount of \$129.00 in unpaid rent along with the \$100.00 filing fee for a total claim of \$543.35.

The tenant testified that she is seeking a monetary order for \$32,555.20. The tenant submits the following breakdown of costs; \$2000.00 for loss of quiet enjoyment, \$5736.00 for non-compliant rent increases, \$24,000.00 for wrongful eviction, \$718.00 for moving expenses, \$215.20 for loss of wages, and \$100.00 for the recovery of the filing fee. The tenant testified that she noted 22 breaches of quiet enjoyment during her tenancy for loss of heat, inability to lock her unit for a week, and numerous disruptions due to tradespeople conducting renovation work in the basement.

The tenant testified that the landlord increased her rent 36% in one year. The tenant testified that she was given a Two Month Notice to End Tenancy for Landlords Use of Property as the landlords were going to move in. The tenant testified that “I beg to differ” as to whether the landlords moved and “I don’t believe they did”. The tenant testified that she saw listings of the unit for short term rental in June 2023. The tenant testified that she had to take a day off of work to move and incurred moving expenses. The tenant believes the landlord issued the notice in bad faith and should be compensated.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party’s claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

#### Utilities

The tenancy agreement supports the landlords claim that the tenant was responsible for 50% of the costs. The tenant made reference that the bills were incorrect but didn't explain or clarify that argument. The tenant did not dispute that she had not paid the amount as claimed. Based on the testimony of the parties, the documentation before me and on a balance of probabilities, I find that the landlord has proven their claim and are entitled to \$314.35 in unpaid utilities.

#### Unpaid Rent

The tenant did not dispute that she moved out on December 2, 2022; two days later than agreed upon. The tenant stated that they landlord had made several compensation offers to the tenant one of which would have allowed her to stay until December 15, 2022. However, the tenant stated that she did not accept or sign any offers. The tenant stated that she stayed because of some confusion. However, I find that it was clear when the tenancy was to end and that the tenant overheld the unit for two days, accordingly; I grant the landlord the prorated amount of rent of \$129.00 for the two days.

#### Filing Fee

As the landlord has been successful in their application, they are entitled to the recovery of the filing fee of \$100.00. The landlord is granted a monetary order of \$543.35.

I address the tenant's application and my findings as follows.

Loss of Quiet Enjoyment

The tenant seeks \$2000.00 for the loss of quiet enjoyment for what she states were 22 breaches of that quiet enjoyment. The tenant testified that the majority of the breaches were as a result of the ongoing renovations being conducted in the basement. The landlords dispute this claim. The landlords testified that there were some small inconveniences and that the work was carried out during business hours with minimal disruption and that all issues were addressed in a timely fashion when brought to their attention. Based on the testimonies of the parties, the documentation before me and on a balance of probabilities, I find that the tenant has not provided sufficient evidence to prove this claim, accordingly; I dismiss this portion of her application.

Rent Increases

The tenant seeks \$5736.00 in overpayments in what she termed “non-compliance” rent increases. The tenant stated that the landlord raised the rent 36% over a twelve month period. The landlords stated that they requested rent increases but never forced the tenant to accept them. The landlords testified that the increases were mutually agreed upon and that the tenant was also given the ability to rent out one of the rooms for \$900.00 per month to help with her costs. The landlords testified that the tenant never raised the issue of the rent increase until they received the tenants application. Based on the testimonies of the parties, the documentation before me and on a balance of probabilities, I find that the rent increases were mutually agreed to and that the tenant has not provided sufficient evidence to prove this claim, accordingly; I dismiss this portion of her application.

Wrongful Eviction

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month’s rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The tenant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. The landlords gave clear, concise and credible testimony that they moved into the home shortly after the tenant moved out and continue to live there. JG testified that he has a hybrid work model and works part time from home and part time in the office and that his wife works full time from home.

The tenants argument that the landlord posted the unit on Facebook for a short term rental in June has no bearing as it is six months past the date the tenant move out. In addition, the landlord addressed the claim as they travelled to Europe for six weeks and then returned back to full time occupancy in August 2023. Based on the above, the landlord has provided sufficient evidence to dispute the allegation of the tenant that the unit was not used for the stated purpose, accordingly; I hereby dismiss this application in its entirety without leave to reapply.

#### *Moving Expenses and Loss of Wages*

As I have found that the landlords complied with the notice to end tenancy and used the property for the stated purpose, the tenant is not entitled to any additional compensation other than the one month rent she has already received as per the notice, accordingly; I dismiss this portion of the tenant's application.

The tenant has not been successful in her application and therefore is not entitled to the recovery of the filing fee, this portion of the application is dismissed. The tenant's application is dismissed in its entirety without leave to reapply.

#### *Conclusion*

The landlord is granted a monetary order in the amount of \$543.35.

The tenant's application is dismissed in its entirety 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: September 25, 2023

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Residential Tenancy Branch