



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 5, 2020, wherein the Landlord sought monetary compensation from the Tenant for loss of rental income, the cost of a locksmith and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on October 27, 2020. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:48 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on July 9, 2020 by registered mail. The registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of July 14, 2020 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

#### Background and Evidence

This tenancy began September 30, 2009. At the time the tenancy ended the monthly rent was \$1,215.98.

The Landlord testified that the tenancy ended pursuant to a Tenant's notice to end tenancy dated July 22, 2020 which was to be effective July 31, 2020.

The Landlord confirmed that the Tenant moved out as of July 29, 2020. However, the Landlord was not able to re-rent the unit as of August 1, 2020 as the Tenant refused the Landlord's entry in July 2020 for the purposes of showing the unit to prospective tenants.

The Landlord stated that the Tenant left the rental unit in such a condition that it is currently not re-rented. He stated that there was a lot of damage done by the Tenant although he has yet to compile his receipts and photos for a related compensation claim.

In the hearing before me the Landlord sought monetary compensation from the Tenant for the following:

August 2020 loss of rent	\$1,215.98
Locksmith	\$30.45
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$1,346.43</b>

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the Landlord's undisputed testimony and evidence before me and on a balance of probabilities, I find as follows.

I accept the Landlord's testimony that the Tenant refused his requests to show the rental unit in July of 2020 such that the Landlord was not able to re-rent the unit for August 2020. I also accept the Landlord's testimony that the rental unit required significant cleaning and repair such that it was not able to be rented for August 2020. I therefore find the Landlord is entitled to recover loss of rent for August 2020 in the amount of **\$1,215.98**. The Landlord is at liberty to reapply for further monetary compensation for the cost to clean and repair the rental unit. As discussed during the hearing the Landlord is reminded to consider the useful building life of building elements as set forth in the table to *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements*.

I accept the Landlord's testimony that he had to pay a locksmith to make new keys for the rental unit as the Tenant initially refused to provide a key or access to the rental unit. The **\$30.45** claimed by the Landlord is supported by the receipt provided in evidence. I therefore find this amount to be recoverable from the Tenant.

As the Landlord has been successful in his Application, I award him recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

### Conclusion

The Landlord's request for an Order for monetary compensation from the Tenant is granted. The Landlord is entitled to **\$1,346.43** calculated as follows:

August 2020 loss of rent	\$1,215.98
Locksmith	\$30.45
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$1,346.43</b>

In furtherance of this my Decision the Landlord is granted a Monetary Order in the amount of **\$1,346.43**. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

In written submissions the Landlord indicated he wanted any monetary award to be payable by M.B. as well. As the Tenant, D.B. was the only Respondent named on the Landlord's Application and was also the only person served with notice of the hearing, the Monetary Order is payable by D.B. only.

The Landlord is at liberty to reapply for monetary compensation from the Tenant for the cost of repairs and cleaning of the rental unit. This does not extend any time limits imposed by the *Act*.

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: October 27, 2020

---

Residential Tenancy Branch