



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1770 BARCLAY ST HOLDINGS LTD. and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

Tenant: **CNR-MT**

Landlord: **FFL, MNR-DR, MNDL, MNDCL**

### Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
2. A Monetary Order against the Tenant to pay to repair damage done to the rental unit pursuant to Section 67 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord confirmed personal service of the Tenant's Notice of Dispute Resolution Proceeding package on March 25, 2022 (the "NoDRP package"). I find that the Landlord was served with the Tenant's NoDRP package for this hearing in accordance with Section 89(1)(a) of the Act.

The Landlord testified that they served the Tenant with their Notice of Dispute Resolution Proceeding package, an Amendment and evidence by registered mail on May 19, 2022 (the "NoDRP package-MN"). The Landlord provided 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. I find that the Tenant was deemed served with the NoDRP package-MN five days after mailing them on May 24, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matter

The Landlord stated that the Tenant vacated the rental unit on May 1, 2022. The Tenant did not attend the hearing. RTB Rule 7.3 specifies that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Tenant did not attend the hearing and has vacated the rental unit, I dismiss the Tenant's application without leave to re-apply.

### 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 against the Tenant to pay to repair damage done to the rental unit?
3. Is the Landlord entitled to an Order for compensation for a monetary loss or other money owed?
4. Is the Landlord entitled to a recovery of the application filing fee?

### Background and Evidence

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

The Landlord testified that this tenancy began as a fixed term tenancy on October 1, 2021. The fixed term was to end on September 30, 2022. Monthly rent was \$1,750.00 payable on the first day of each month. A security deposit of \$875.00 was collected at the start of the tenancy and is still held by the Landlord. The Landlord stated the Tenant returned the rental unit's keys on about May 1, 2022.

The Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the Tenant's door on March 4, 2022 (the "10 Day Notice"). The Landlord uploaded a Proof of Service #RTB-34 form attesting to this service. The Tenant applied to dispute this notice on March 16, 2022. The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,020.00 in outstanding rent on March 1, 2022. The effective date of the 10 Day Notice was March 17, 2022.

The Landlord testified that the Tenant paid small amounts of rent and by the end of March 2022, the Tenant's outstanding rent was all paid up. On April 1, 2022, the Tenant owed the next month's rent, but only paid about half of that month's rent by the end of the month. The Landlord claims that \$850.00 is still outstanding for April's rent.

The Landlord uploaded a condition inspection report for move-in and move-out conditions. The Landlord said the Tenant did not participate in the move-out condition inspection, but they emailed the completed copy to the Tenant.

The Landlord claims compensation of \$939.75 for repairs to the rental unit which the Tenant did not complete prior to him leaving. The Landlord uploaded pictures of the damage in the rental unit, and the contractor's receipt outlining the work for which the Landlord is claiming compensation. The contractor's work included painting, replacing a bedroom light fixture, replacing burnt out lights, replacing damaged electrical outlets and the contractor's labour. The Landlord said it is not the complete total they had to pay, but it is the amount they feel is the Tenant's responsibility.

The Landlord also uploaded an invoice for cleaning of the rental unit. The contractors spent three hours cleaning in the rental unit, which also included cleaning the inside of

the oven and on top of the stove. Again, the Landlord uploaded pictures demonstrating the state of the rental unit prior to the clean up. The total for this claim is \$283.50.

The Landlord's monetary worksheet specifies \$900.00 for loss of half of month's rent in May due to the time needed to clean the rental unit and to re-rent the suite. This amount corresponds to half a month's rent for the new tenants in the unit. The Landlord amended this amount to \$875.00 which is a half month's rent for the Tenant.

The Landlord seeks a total Monetary Award in the amount of \$2,948.25.

### 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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence that \$850.00 is still outstanding for April's rent, I find the Landlord has proven on a balance of probabilities that they are entitled to \$850.00 in unpaid rent.

Section 37 of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Landlord testified that the Tenant did not participate in the move-out condition inspection, even though they tried to organize this with him. A copy of the final move-out

condition inspection was emailed to the Tenant. RTB Policy Guideline #16 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 section must be read in conjunction with Section 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.

Based on the Landlord's undisputed testimony, and after a review of the Landlord's documentary evidence of the state of the rental unit when the Tenant vacated, I find the Tenant did not leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and the Landlord has suffered loss and damage which they dealt with on their own. The Landlord provided proof of the value of the loss and damage they suffered, and they have not attempted to make their claims excessive. I also find that the Landlord suffered a loss of rental income that was to be received under the tenancy agreement. I find the Landlord's claims are reasonable and they are entitled to compensation for the total costs for repairs in the amount of \$939.75, clean up of the rental unit in the amount of \$283.50, and loss of half a month's rental income in the amount of \$875.00.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application. I order compensation owed to the Landlord may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. Pursuant to Section 67 of the Act, the Landlord's Monetary Award is as follows:

Monetary Award

Unpaid Rent	\$850.00
Repairs to Rental Unit	\$939.75
Clean up of Rental Unit	\$283.50
Rental Income Loss	\$875.00
Plus Application Filing Fee	\$100.00
Less Security Deposit	-\$875.00
TOTAL Monetary Award:	\$2,173.25

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$2,173.25. The Tenant must be served with this Order as soon as possible. Should the Tenant 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: July 07, 2022

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Residential Tenancy Branch