



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2013, by the Landlord to obtain a Monetary Order for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

The Landlords affirmed that each Tenant was served copies of the application for dispute resolution and notice of hearing documents on January 21, 2013. The Landlords advised that C.O. was served in person by S.D. at their job site and M.V. was served by priority mail. The Landlords stated that the priority mail was not sent registered and did not require a signature so they have no proof if M.V. received it.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve each respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents while the other was served in a manner that does not meet the requirements of the Act. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the male Tenant, C.O. who has been properly served with Notice of this Proceeding. As the second Tenant, M.V. has not been properly served the Application for Dispute Resolution as required the monetary claim against the female Tenant is dismissed without leave to reapply.

Based on the above I find the male Tenant, C.O. to be sufficiently served notice of this proceeding and I continued in his absence.

### Issue(s) to be Decided

Should the Landlords be awarded a Monetary Order?

### Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: a written submission with a witness' name and contact information; and photos of the damaged lawn and countertop.

The Landlords testified that they had entered into a verbal tenancy agreement with the Tenants that began on October 15, 2012. Rent was payable on the first of each month in the amount of \$ 650.00 plus \$50.00 utilities and the Tenants paid \$200.00 as the security deposit in November 2012. On December 1, 2013, the Tenants told the Landlords they were moving out at the end of the month and the tenancy ended December 31, 2012. No move in or move out condition inspection report forms were completed.

The Landlord stated the Tenants left the unit with damage to the granite counter top and damage to the lawn as displayed in the photos they provided in evidence. The Landlords are seeking \$1,600.00 to cover the costs to repair these two items. They confirmed the repairs have not been completed and they determined the amount of the required repairs based on what they were told by their landlord.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlords and corroborated by their documentary evidence.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the aforementioned I find the Tenants have breached section 32(3) of the Act, leaving the rental unit with some damage at the end of the tenancy.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, I find the Landlords have provided insufficient evidence to prove or verify the value of the damages claimed. The Landlords testified that the work had not been performed so they claimed an amount based on what their landlord thought it would cost.

In an instance where a party is relying on estimates for work not yet performed, I would expect to see a third party provide these estimates. For example, the Landlords have estimated it will cost \$1,600.00 to repair or replace the counter and lawn, yet there is no evidence, such as a quote from a counter top company or landscaper, to support this estimate. These were, simply put, guesses made by the Landlords.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In this case I find that the Landlords are entitled to nominal damages for the lawn and countertop damage and I award them **\$50.00**.

The Landlords have been partially successful with their claim; therefore, I award partial recovery of the filing fee in the amount of **\$25.00**.

### Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$75.00** (\$50.00 + \$25.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 12, 2013

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Residential Tenancy Branch

