



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Smallwood Pacific Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, FF

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The male landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's assistant testified that she sent a copy of the landlords' dispute resolution hearing package addressed to both tenants to their address at that time by registered mail on May 2, 2013. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I am satisfied that the tenants were deemed served with this package on May 7, 2013, the fifth day after its registered mailing.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy?  
Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy commenced on March 15, 2013. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$425.00 security deposit paid on or about March 15, 2013. The landlord testified that this tenancy ended when the tenants vacated the rental unit by mid-May 2013, without paying anything towards their May 2013 rent.

The landlords applied for a monetary award of \$699.04, their cost of replacing three windows broken during this tenancy. The landlords supplied documents supporting their claim that this damage occurred during this tenancy and that the landlords incurred

these costs to repair the broken windows on April 29, 2013, while the tenants remained in the rental unit.

### Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant(s) caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlords' undisputed oral and written evidence, I am fully satisfied that the tenants are responsible for the damage claimed by the landlords and that the landlords have incurred costs of \$699.04 to repair the broken windows in this rental unit. For these reasons, I allow the landlords' application for a monetary award in the above amount for damage arising out of this tenancy.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlords were successful in this application, I find that the landlords are entitled to recover their \$50.00 filing fee paid for this application from the tenants.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover damage arising out of this tenancy and the filing fee for their application and to retain the tenants' security deposit:

Item	Amount
Damage to Windows	\$699.04
Less Security Deposit	-425.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$324.04</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 29, 2013

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Residential Tenancy Branch

