



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 4, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The parties confirmed they entered into a written month to month tenancy that began on June 1, 2013. Rent was payable on the first of each month in the amount of \$1,175.00

and on April 27, 2013, the Tenants paid \$587.50 as the security deposit. The tenancy ended when the Tenants vacated the property on July 1, 2013.

The Landlord testified that the Tenant's sister ran over the light post, which is located on her property near the corner of the driveway, when the sister was assisting the Tenants move into the unit. She said the Tenant informed her that her sister would look after hiring someone to repair the damaged post. During the repair period the sister refused to accept calls from the Landlord and would only communicate by e-mail and the repair person refused to speak with the Landlord.

The Landlord argued that the light post was never repaired properly, as supported by her photos, and she is seeking \$860.00 to have the light post repaired. She noted the e-mails received from the sister that indicated the repair person admitted that he was not the right person for the job. The photos show that he left broken glass and broken bricks as part of the post.

The Landlord pointed to her evidence which included several quotes for the repair and has claimed the mid range amount. She chose the mid range amount because she is not sure how much the final cost will be when she considers how many contractors will refuse to do such a small job.

The female Tenant provided all of the testimony on behalf of the respondents. The male Tenant was given several opportunities to submit testimony but each time he stated that he had nothing to add.

The Tenant accepted responsibility for the damaged light post however she did not agree with the amount being claimed. She indicated that the Landlord's minor daughter told them that the light post gets hit all the time. The Tenant advised that they did attempt to fix or have the post fixed but it was never to the Landlord's liking. The male Tenant had even offered to try and fix it but the Landlord did not want him to attempt the repair. The Tenant advised that the person who attempted the repair job was a family friend who owns his own contracting company so he was not just someone they knew.

In closing, the Landlord confirmed that the post had been repaired about two years earlier but there was no damage or cracks to it at the time the Tenant's sister ran into it. The Tenant argued that the Landlord was insisting that it be either an ICBC claim or a claim through this dispute resolution process rather than allowing the male Tenant attempt to fix it.

### Analysis

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*. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. 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.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

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.

In this case the evidence supports that at the start of the tenancy the light stand was in good condition, as it had been repaired within the last couple of years. The evidence further supports that a guest, allowed on the property by the Tenants, caused damage to the light stand.

Notwithstanding the Tenants attempts to have the light stand repaired, I find it was not repaired properly which has caused them to breach section 32(3) of the Act by leaving the rental unit with some damage at the end of the tenancy.

I accept the amount claimed by the Landlord to be reasonable as she provided several different quotes and has only claimed an amount equal to the mid range of the estimated value of the repair. As per the foregoing, I find the Landlord has met the burden of proof and I award her damages in the amount of **\$860.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages	\$860.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$910.00
<b>LESS:</b> Security Deposit \$587.50 + Interest 0.00	<u>-587.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 322.50</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$322.50**. 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: October 03, 2013

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Residential Tenancy Branch

