



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD MNDC FF

### Preliminary Issues

The Landlord indicated that the Tenant R.H. was commonly known by a different name. Therefore, in accordance with section 62 of the Act, I amended the style of cause to include the name that Tenant went by.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 30, 2013, by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for 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 Landlord testified that K.D. personally served the Tenant. R.F. with the hearing documents and their evidence, on June 4, 2013, in the presence of a witness. R.F. signed the proof of service document acknowledging receipt.

K.D. initially testified that they did not have a forwarding address for the male Tenant, H.F. and therefore they were not able to serve him. Then, L.D. testified that they had personally served H.F. with the required documents and evidence; however, she could not locate the proof of service document at that time. Therefore, they requested that we proceed with their claim against R.F. (a.k.a. B.F.).

Based on the submissions of the Landlord I find that R.F. was sufficiently served notice of this proceeding, in accordance with section 89 of the Act. Therefore, I proceeded with the hearing in the absence of the Tenants.

As service to H.F. has not been proven, I dismiss the monetary claim against him, without leave to reapply.

The Landlord and her spouse appeared at the teleconference hearing and gave affirmed testimony. 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 Landlord submitted evidence in support of their claim which included copies of: photos of the rental unit; receipts for repairs; the move in and move out condition inspection report form; and a letter from the Tenant.

The parties entered into a fixed term tenancy agreement that began on May 1, 2011 and switched to a month to month tenancy after April 30, 2012. Rent was payable on the first of each month in the amount of \$800.00 and on April 28, 2011 the Tenant's paid \$400.00 of the security deposit. The Tenants vacated the property sometime towards the end of May 2013, after the Landlord was granted an Order of Possession.

The Landlord's spouse testified that the Tenant delivered her letter dated May 21, 2013, to their office which states that the inside of the home "has not been cleaned" and the Tenants "choose to wave doing" the exit inspection.

The Landlord stated that they are claiming \$840.22 for repairs and cleaning, as supported by the receipts provided in their evidence. They noted that the move in condition inspection report form outlines the condition of the unit at the beginning of the tenancy and the photos and move out condition report form shows the damage and debris left behind. They stated they cleaned and repaired the unit and have since been able to re-rent the home.

### 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*. 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.

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

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy Accordingly, I find the Landlord has met the burden of proof and I award her damages in the amount of **\$840.22**.

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 and repairs	\$840.22
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$890.22
<b>LESS:</b> Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$490.22</u></b>

Conclusion

The claim against H.F. is HEREBY DISMISSED, without leave to reapply.

The Landlord has been awarded a Monetary Order in the amount of **\$490.22**. This Order is legally binding and must be served upon the Tenant R.F. In the event that the Tenant does 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: September 10, 2013

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Residential Tenancy Branch