



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1006B HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. The parties had the hearing process explained to them and during the hearing the parties were given the opportunity to provide their evidence orally and refer to any relevant documentary evidence submitted in accordance with the rules of procedure. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenants confirmed receiving the evidence from the landlord and that they had the opportunity to review the landlord’s evidence prior to the hearing. The tenants confirmed that they did not submit their own evidence prior to the hearing. I find the tenants were served in accordance with the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

### Background and Evidence

A copy of the fixed term tenancy agreement was submitted in evidence. The parties confirmed that the first fixed term tenancy agreement began on March 7, 2013 and ended on May 31, 2013, and that the second and recent fixed term tenancy agreement began on June 1, 2013 and ended on August 31, 2013, which required the tenants to provide vacant possession of the rental unit as of August 31, 2013.

Monthly rent in the amount of \$8,000.00 was due on the first day of each month. The tenants paid a security deposit of \$4,000.00 at the start of the original tenancy agreement in March 2013, which the landlord continues to hold. The parties agreed that the tenants vacated the rental unit on August 31, 2013.

The landlord has applied for a monetary order in the amount of \$4,679.00, which actually totals \$4,679.28 comprised of the following:

Item 1. Unpaid hydro bills	\$1,476.75
Item 2. Service call for lost remote fobs	\$163.80
Item 3. Strata bylaw fines for noise	\$350.00
Item 4. Cleaning of suite due to tenants' pet	\$1,282.40
Item 5. Move-out cleaning costs	\$1,406.33
<b>TOTAL</b>	<b>\$4,679.28</b>

#### Settlement Agreement

During the hearing, the parties agreed to mutually settle on several of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

<b>Settlement Agreement Item Description</b>	<b>Agreed upon compensation to landlord by tenants</b>
Item 1 – Unpaid hydro bills	\$1,476.75
Item 2 – Service call for lost remote fobs	\$123.90
Item 3 – Strata bylaw fines for noise	\$350.00
<b>TOTAL</b>	<b>\$1,950.65</b>

Regarding item 4, the landlord has claimed \$1,282.40 for cleaning of the rental unit due to the tenants' allegedly having an unauthorized pet in the rental unit. The agent confirmed that the landlord provided five photographs in evidence to support this portion of the landlord's claim. The five photographs submitted are very small and are not clear. Furthermore, the condition inspection report submitted in evidence has checkmarks beside all but one of the items which indicate "satisfactory", and the one item which has something other than "satisfactory" indicated, is Den, Office which is indicated as "touch ups" but does not indicate the associated code indicating whether it is satisfactory, damaged, needs cleaning, missing etc. The tenants did not agree to this portion of the landlord's claim. The landlord did not present any witnesses to support this portion of their claim.

Regarding item 5, the landlord has claimed \$1,406.33 for move-out cleaning costs, net of the "cleaning deposit". The tenants did not agree to this portion of the landlord's claim and stated that the landlord required that they agree to a \$695.00 fee for a "move out cleaning fee" under section 6 in the tenancy agreement, the "Rent and Fees" portion of the tenancy agreement. The condition inspection report does not support that the rental unit was left dirty at the end of the tenancy by the tenants. The landlord did not present any witnesses to support this portion of their claim.

The landlord also submitted a timesheet which indicates “repairs for move-out of tenants”, receipts and cleaning invoices in evidence.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 4** – The landlord has claimed \$1,282.40 for cleaning of the rental unit due to the tenants’ allegedly having an unauthorized pet in the rental unit. **I find** that the condition inspection report does not support this portion of the landlord’s claim as the landlord clearly indicated “satisfactory” of all but one of the items on the condition inspection report, with the single remaining item not having an associated code indicated on the condition inspection report. Furthermore, I afford no weight to the the five photos submitted in evidence as the photos were too small and unclear to support the landlord’s claim. I do not accept that the photos show a rental unit in need of cleaning. As a result of the above, **I dismiss** this portion of the landlord’s claim due to insufficient and contradictory evidence, **without leave to reapply**.

**Item 5** – The landlord has claimed \$1,406.33 for move-out cleaning costs, net of the “cleaning deposit”. Firstly, **I find** the “cleaning deposit” fee of \$695.00 is not an enforceable term of the tenancy agreement as it does not indicate what requires

cleaning, when and how that amount is reached and whether the fee would be charged even if the rental unit required no cleaning at the end of the tenancy. Furthermore, **I find** the condition inspection report does not support that the rental unit was left dirty at the end of the tenancy by the tenants. The landlord did not present any witnesses to support this portion of their claim. Furthermore, the invoices submitted in evidence are not sufficient evidence to support this portion of the landlord's claim when the condition inspection report is contradictory, as that report indicates that the rental unit was left in "satisfactory" condition at the end of the tenancy based on the evidence before me. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient and contradictory evidence, **without leave to reapply**.

The parties did mutually agree for the tenants to compensate the landlord the amount of **\$1,950.65** based on the settlement agreement described above under "Settlement Agreement".

As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

**Monetary order** – Based on the above, **I find** the landlord has established a total monetary claim of **\$2,000.65** comprised of a settlement agreement regarding items 1, 2, and 3 in the amount of \$1,950.65, plus the filing fee of \$50.00. I have dismissed items 4 and 5. As the landlord continues to hold the tenants' \$4,000.00 security deposit, **I ORDER** the landlord to retain **\$2,000.65** from the tenants' security deposit in full satisfaction of the landlord's monetary claim, and return the balance of the tenants' security deposit in the amount of **\$1,999.35** within **15 days** of receiving this decision. Should the landlord fail to return \$1,999.35 as ordered, **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,999.35 which must be served on the landlord and enforced as an order of the Provincial Court of British Columbia (Small Claims).

#### Conclusion

Items 4 and 5 of the landlord's claim have been dismissed without leave to reapply, due to insufficient and contradictory evidence.

By way of a settlement agreement, I order the parties to comply with the terms of their settlement agreement as described above.

The landlord has been ordered to retain \$2,000.65 from the tenants' security deposit in full satisfaction of the landlord's claim, and to return the balance of the tenants' security deposit in the amount of \$1,999.35 within 15 days of receiving this decision. Should the landlord fail to return \$1,999.35 as ordered, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,999.35 which must be served on the landlord and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 15, 2014

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Residential Tenancy Branch

