



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNSD MNDC FF

### Preliminary Issues

Upon review of the Landlords' application for Dispute Resolution and the Notice of Hearing Document it was noted that M.H.'s first name was spelled incorrectly on the Application form and spelled correctly on the Notice of Hearing Document. The spelling error did not change the common name as it was simply a reversal of two vowels. The Landlords requested that the typing error be corrected on their application. Accordingly, the style of cause was amended to show the correct spelling of M.H.'s first name, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on June 12, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by both Landlords. Despite both Landlords being present H.C. was the only one who provided testimony during the hearing. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Landlord testified that the Tenant M.H. was personally served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on June 13, 2014, at M.H.'s place of employment, in the presence of a witness. The Landlord affirmed that R.R. was not served with copies of their application or Notice of hearing documents.

The Landlord affirmed that on October 1, 2014, he attended the Tenants' new residence and attempted to hand the evidence package to R.R. who refused to accept the evidence. The Landlord knew that M.H. was inside the house and when the Tenant failed to answer the door the evidence package was left on the door step.

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 Application for Dispute Resolution and Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only M.H. who has been properly served with Notice of this Proceeding. As the second Tenant, R.R., has not been properly served the Application for Dispute Resolution as required, the monetary claim against R.R. is dismissed without leave to reapply.

Based on the foregoing, I find that M.H. was sufficiently served Notice of this proceeding and I continued with the hearing in absence of M.H.

### Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order?

### Background and Evidence

The Landlord testified that this written tenancy agreement was for a fixed term tenancy that commenced on July 1, 2013 with R.R. and his girlfriend listed as tenants. The agreement was amended on November 1, 2013 to remove the girlfriend as tenant and add M.H. as Tenant. Rent was payable on the first of each month in the amount of \$1,100.00 and on July 1, 2013 the Tenants paid \$550.00 as the security deposit. A condition inspection report form was completed and signed by both parties on June 28, 2013.

The Landlords applied for \$2,625.32 which was lost and expended due to the Tenants' failure to pay rent and damages caused to the rental property. On February 24, 2014, the Landlords served the Tenants a 10 Day Notice to end tenancy and on March 10, 2014 the Landlords found the unit empty, damaged, and requiring cleaning. The Landlords also suffered one month's lost rent as they were not able to re-rent the unit for March 2014.

### 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 Landlord and corroborated by their documentary evidence.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

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 Tenant has breached the Act, not paying rent in accordance with the tenancy agreement and leaving the rental unit unclean and with some damage at the end of the tenancy. As per the foregoing I find the Landlords have met the burden of proof and I award them damages and loss in the amount of **\$2,496.49** (\$686.49 receipts + \$905.00 February Rent + \$905.00 loss of March rent).

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

**Monetary Order** – I find that the Landlords are 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 & Loss	\$2,496.49
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,546.49
<b>LESS:</b> Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$1,996.49</u></b>

### Conclusion

As the second Tenant, R.R., has not been properly served the Application for Dispute Resolution or the Notice of Hearing as required, the monetary claim against R.R. is dismissed, without leave to reapply.

The Landlords have been awarded a Monetary Order for **\$1,996.49** against M.H. This Order is legally binding and must be served upon the Tenant M.H. 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: October 15, 2014

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Residential Tenancy Branch

