



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, expenses relating to Supreme Court proceedings (baliff and filing fees) for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

A previous hearing was conducted on November 18, 2014. The Landlord did not attend and his application was dismissed. The Landlord applied for a review of the decision on the basis that he was unable to attend the original hearing because of circumstances that could not have been anticipated and were beyond his control; namely, unpredicted medical problems. On December 1, 2014 the Landlord's application for a review was granted.

At the original date set for the within hearing, January 14, 2015, only the Landlord attended. He testified that he had not served the Tenants with the Review Consideration Decision or Notice of Hearing as he was informed by staff at the Branch that he did not need to serve them. On my own initiative and pursuant to Rule 6.3 of the *Residential Tenancy Branch Rules of Procedure*, I adjourned the hearing to allow the Landlord to attend to service.

The hearing reconvened on February 10, 2015. At that time, only the Landlord attended and again service of the application materials was considered. The Landlord testified that he served the Tenants by registered mail to the addresses the Tenants provided to the Landlord on July 15, 2014. Notably, these were also the addresses they provided to the branch during the November 18, 2014 hearing. Introduced in evidence by the Landlord were the registered mail tracking numbers for both Tenants. I find the Landlord served the Tenants in accordance with the Act.

### Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began April 1, 2014. Monthly rent was payable in the amount of \$980.00 per month. The Tenants paid a security deposit on March 14, 2014 in the amount of \$490.00 as well as a pet damage deposit in the amount of \$500.00.

The Landlord filed for an early end to tenancy pursuant to section 56 of the Act, as well as an Order of Possession pursuant to section 55. Both requests were granted during a hearing on June 11, 2014.

The Tenants refused to vacate the property and the Landlord filed for a Writ of Possession in the Supreme Court of B.C. The Landlord incurred the cost of filing in the amount of \$80.00 as well as bailiff fees in the amount of \$1,427.65. The Landlord submitted receipts for both expenses.

The Landlord testified that approximately one hour after the Tenants were removed by the baliff, they broke into the rental unit damaging the lock and showerhead. The Landlord sought the sum of \$72.34 for the cost of replacing both and provided in evidence the receipts relating to these costs.

The condition of the rental unit was such that the Landlord could not rent for the month of July 2014; consequently, the Landlord incurred rental losses of \$980.00 for the month of July. As well, the Tenants failed to clean the carpets and the Landlord attended to this at a cost of \$94.50.

The Landlord claims a total of \$2,704.49 as follows:

Loss of rent for July 2014	\$980.00
Baliff costs	\$1,427.65
Supreme court filing fee	\$80.00
Carpet cleaning	\$94.50
Damage to door and shower head	\$72.34
Filing fee	50.00
<b>Total claimed</b>	<b>\$2,704.49</b>

### Analysis

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 Landlords to prove the existence of the damage and loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not clean the unit, or make necessary repairs, refused to leave the rental unit, caused damage to the premises, and this has caused losses to the Landlord. Furthermore, I find that due to the condition the rental unit was left in by the Tenants, the Landlord has suffered a loss of rent for one month.

I also find that the Tenants, by refusing to vacate the rental unit after being served with the Order of Possession, caused the Landlord to incur additional costs in filing for a Writ of Possession as well as the bailiff fees to remove the Tenants. I allow the bailiff fee of \$1,427.65. The \$80.00 filing fee is a cost of the Supreme Court proceedings which is not allowable under the Act.

The evidence indicates that the carpets were not steam cleaned when the Tenant left, as required under the Act and the tenancy agreement.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I allow the Landlord's claim for the cost of cleaning the carpets as well as his request to recover the filing fee. In total I allow the Landlord his claim, save and except for the \$80.00 fee to file in Supreme Court, and grant him a Monetary Order in the amount of **\$2,624.49.**

I order that the Landlord retain the security deposit and pet damage deposit in the total amount of \$990.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,634.49**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

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: February 19, 2015

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Residential Tenancy Branch

