



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated September 8, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail. She stated the Application package was served on the Tenant at three addresses provided by the Tenant on a rental application she completed at the beginning of the tenancy. Tracking information submitted by the Landlord confirmed the Application package was accepted and signed for by the Tenant's husband on September 29, 2016. In the absence of evidence to the contrary, I find the Tenant was duly served with the Landlord's Application package on that date.

The Landlord was provided the opportunity to present 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.

### Preliminary and Procedural Matters

The Application indicated the Landlord sought a monetary order of \$6,025.00. However, the Monetary Order Worksheet, dated September 15, 2016, disclosed a total monetary claim of \$9,078.13. The Landlord confirmed she was prepared to waive any amount over \$6,025.00.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order permitting her to retain all or part of the security deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. The agreement confirms a fixed-term tenancy for the period from July 1, 2015 to June 30, 2016. At the end of the tenancy, the Tenant was required to move out of the rental unit. However, the Tenant requested an extension to August 31, 2016, which was granted. At all material times, rent in the amount of \$1,790.00 per month was due on the first day of each month, and was paid by the Tenant's husband for most of the tenancy. The Landlord received a security deposit of \$895.00, which she holds.

The Landlord testified the Tenant left the rental unit in very poor condition at the end of the tenancy. In addition to oral testimony, the Landlord provided digital evidence in the form of images and video clips, and documentary evidence. The Landlord's claim was set out in a Monetary Order Worksheet, dated September 15, 2016.

**Cleaning.** The Landlord sought to recover \$189.00 she paid for cleaning services. In support, she provided an invoice for this amount, as well as a number of digital images and video clips showing the condition of the rental unit at the end of the tenancy.

**Carpet and Painting.** The Landlord testified she paid \$5,355.00 to install laminate flooring to replace carpet in the rental unit, and to repair damages to walls and repaint the rental unit. According to the Landlord, the carpet in the rental unit was about three years old; however, she was unable to confirm when the rental unit was last painted. In

support of this aspect of her claim, the Landlord submitted three cheques, payable to a renovation company.

**Blinds.** The Landlord testified she paid \$1,365.00 to replace damaged blinds in the rental unit. In support, the Landlord submitted an invoice. In addition, she provided digital images depicting the blinds and a receipt confirming payment of the amount claimed.

**Garbage removal.** The Landlord testified that she and a friend spent several days cleaning garbage and debris from the rental unit. She claimed \$400.00 for the time spent doing this task.

**Damaged handles.** The Landlord submitted an invoice from Home Depot for replacement handles for the patio and toilet, and for a replacement lock. The total of the invoice was \$61.41.

**Lock re-keying.** The Landlord testified she paid \$26.25 to re-key the lock to the rental unit. A receipt was not provided in support.

**Rent.** The Landlord claimed she was unable to re-rent the unit until October 15, 2016, due to the condition when the Tenant vacated. She seeks to recover lost rent for the month of September 2016 only in the amount of \$1,790.00.

**NSF charge.** The Landlord testified she incurred an NSF charge of \$30.00 for a late August 2015 rent payment.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and wishes to apply the security deposit to any monetary award granted.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord provided unchallenged oral testimony and documentary and digital evidence in support of the Landlord's claim for compensation. The Tenant did not attend the hearing although duly served with notice of the hearing.

With respect to the Landlord's claim for cleaning costs, I find the Tenants left the rental unit in very poor condition at the end of the tenancy, as evidenced by the digital images submitted into evidence. Accordingly, I find the Landlord is entitled to an award of \$189.00 for cleaning costs.

With respect to the Landlord's claim to recover \$5,355.00 to replace the carpet with laminate flooring and paint the rental unit, I find this to be excessive. First, the Landlord testified the rental unit is only 540 square feet. Second, although the images of the rental unit confirmed it was left in poor condition, there was no specific evidence that the Landlord tried to minimize losses by having the carpet professionally cleaned, or to justify the installation of laminate flooring. Third, while the images submitted into evidence depict damage to the walls of the rental unit, there is insufficient evidence before me to conclude the damage was sufficient to justify repainting the entire rental unit. However, as there is some evidence of damage to the carpets and walls beyond reasonable wear and tear, I award the Landlord \$1,000.00 towards these expenses.

With respect to the Landlord's claim to recover \$1,365.00 to replace blinds in the rental unit, I find the photographic evidence depicts the blinds askew but does not provide

sufficient evidence to satisfy me they were damaged beyond repair and had to be replaced. Accordingly, I decline to grant the Landlord an award for this expense.

With respect to the Landlord's claim to recover \$400.00 for time she and a friend spent removing garbage left behind by the Tenant, I find the Landlord is entitled to this amount. The photographic evidence submitted confirmed the poor condition and excessive garbage left in the rental unit at the end of the tenancy. The Landlord is granted an award of \$400.00 for this expense.

With respect to the Landlord's claim to recover \$61.41 for items purchased at a hardware store, I find the Landlord is entitled to recover this amount. The invoice submitted into evidence was supported by photographic evidence of the rental unit and the need for the items purchased.

With respect to the Landlord's claim to recover the cost to re-key the lock of the door to the rental unit, the Landlord testified during the hearing that the actual cost incurred was \$26.25, which I allow.

With respect to the Landlord's claim to recover lost rent for the month of September 2016, I find the Tenant left the rental unit in sufficiently poor condition that the Landlord would not have been able to re-rent it in September 2016. In fact, the Landlord's testimony was that the rental unit was not re-rented until October 15, 2016. Accordingly, I find the Landlord is entitled to an award of \$1,790.00 for lost rent for the month of September 2016.

With respect to the Landlord's claim to recover a \$30.00 NSF charge for August 2015, a year before the tenancy ended, I find there was insufficient evidence submitted by the Landlord to demonstrate an entitlement to this amount.

Having been successful, I grant the Landlord recovery of the \$100.00 filing fee paid to make the Application, and order that the Landlord may retain the security deposit in partial satisfaction of the award.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,672.66, which has been calculated as follows:

<b>Item</b>	<b>Amount</b>
Cleaning costs:	\$189.00
Carpet and painting:	\$1,000.00
Garbage removal:	\$400.00
Hardware store expenses:	\$61.41
Re-key locks:	\$26.25
Lost rent (September 2016):	\$1,790.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$895.00)
<b>TOTAL:</b>	<b>\$2,671.66</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$2,671.66. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 27, 2017

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Residential Tenancy Branch