



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act* and the tenancy agreement, authority to retain the Tenants' security deposit and to recover the filing fee.

Only the Landlord's, Administrative Assistant, K.N., appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

K.N. testified that she individually served both the Tenants with the Notice of Hearing and the Landlord's Application on July 29, 2016 by registered mail. She stated that she sent the packages to the forwarding address the Tenants provided at a previous arbitration on July 18, 2016. A copy of the registered mail tracking number and the file number for the July 18, 2016 hearing are provided on the unpublished cover page of this my Decision. K.N. confirmed that both packages were returned as "unclaimed".

Residential Tenancy Policy Guideline—12: Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenants were duly served as of August 3, 2016 and I proceeded with the hearing in their absence.

K.N. testified that she submitted 14 pages of evidence on July 29, 2016. That evidence was not before me at the hearing on January 30, 2017. I accept her testimony that the evidence was filed at the time of filing the Application. During the hearing I provided her with the fax number for the Branch and asked that she fax the 14 pages of evidence for my consideration.

I confirm that on January 31, 2017 I received the Landlord's 14 pages of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be entitled to retain the Tenants' security deposit?
3. Should the Landlord recovery the filing fee paid?

Background and Evidence

K.N. testified that the tenancy began September 1, 2015. Monthly rent was payable in the amount of \$860.00 payable on the first of the month. The Tenants paid a security deposit in the amount of \$430.00.

A copy of the Residential Tenancy Agreement, signed August 4, 2015 (the "Agreement") was also provided in evidence which confirmed the terms of the tenancy.

Clause 2 of the Agreement provides that the tenancy was for a fixed one year term ending August 31, 2016 and includes the following:

"...If the Tenant terminates, or causes the landlord to terminate, the fixed term tenancy before the end of the original term as set out in (b) above, the landlord may, at the landlord's option, treat this Agreement as being at an end. In such an event, the sum of \$300.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the rental unit. The landlord and tenant acknowledge and agree that the payment of these liquidated damages will not preclude the landlord from exercising any further right of pursuing another remedy available in law or equity, including, but not limited to, damage to the rental unit and

damages as a result of loss of rental income due to the Tenant's breach of any term of this Agreement."

Clause 3 of the "Additional Terms" to the Agreement provides that the Tenants are responsible for the cost or professional cleaning of the carpets and drapes at the end of the tenancy.

The Tenants vacated the rental unit on or before June 30, 2015. K.N. stated that the Tenants asked for more time to attend to some cleaning to which the Landlord agreed. K.N. stated that they made arrangements to do a move out condition inspection on June 30, 2015 after the Tenants were provided the requested more time to clean and the Tenants failed to attend.

As noted previously in this my Decision, the parties attended arbitration on July 18, 2016. At that time the Tenants provided the Landlord with their forwarding address.

K.N. stated that the Tenants failed to clean the carpets and draperies as required, failed to return the keys, and left garbage in the rental unit which required disposal.

Filed in evidence was a document wherein the Landlord provided the following breakdown of the compensation sought:

Outstanding rent (June 2016)	\$860.00
Carpet cleaning	\$102.90
Drapery cleaning	\$15.00
Lock and key replacement (mail and deadbolt lock)	\$1100.00
Hauling	\$100.00
Liquidated damages	\$300.00
Filing fee	\$100.00
TOTAL	\$1,627.90

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

The Agreement provided that rent was due on the 1st of the month. I accept the Landlord's undisputed evidence that the Tenants failed to pay the rent for June 2016 and as such the Tenants breached the Agreement. I award the Landlord compensation for unpaid rent in the amount of **\$860.00**.

I also accept the Landlord's undisputed evidence and K.N.'s undisputed testimony that the Tenants failed to clean the carpets and draperies as required by the Agreement, accordingly, I award the Landlord the requested **\$102.90** and **\$15.00** for the amounts incurred by the Landlord to attend to these tasks.

I find that the Tenants failed to return the keys to the rental unit such that the Landlord incurred the cost to change the locks and replace the keys; the **\$100.00** claimed is therefore recoverable.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 the Act as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the Landlord's evidence that the Tenants failed to remove their garbage, and as such did not leave the rental unit reasonably clean as required by section 37; accordingly I award the Landlord the **\$100.00** claimed for hauling.

Clause 2 of the Agreement specifically provides that the Landlord is entitled to \$300.00 in liquated damages in the event the tenancy ends prior to the specified term; as the tenancy ended prior to August 31, 2016, the Landlord is entitled to the **\$300.00** claimed.

Having been substantially successful I also award the Landlord recovery of the **\$100.00** filing fee.

In total I grant the Landlord compensation in the amount of \$1,627.90 calculated as follows.

Outstanding rent (June 2016)	\$860.00
Carpet cleaning	\$102.90
Drapery cleaning	\$15.00
Lock and key replacement (mail and deadbolt lock)	\$100.00
Hauling	\$100.00
Liquidated damages	\$300.00
Filing fee	\$100.00
TOTAL	\$1,627.90

Conclusion

The Landlord is granted monetary compensation in the amount of \$1,627.90 for outstanding rent, cleaning of the rental unit, replacement of locks and keys, liquidated damages and recovery of the filing fee.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain the Tenant's \$430.00 security deposit and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,197.90**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: February 3, 2017

Residential Tenancy Branch