



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package, the amendment to a dispute resolution application and the landlord's submitted documentary evidence. Both parties confirmed that the tenant served the landlord with his notice of hearing package. The tenant confirmed that he did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss, unpaid utilities and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for return of the security deposit, for compensation pursuant to section 38 of the Act and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that a signed tenancy agreement was made, but that neither party submitted a copy for the hearing. Both parties agreed that this tenancy originally began on July 1, 2014 on a fixed term ending on June 30, 2015 and was later extended with the same terms for an additional 1 year period. The monthly rent was \$1,000.00 payable on the 1<sup>st</sup> day of each month. Both parties agreed that the tenant paid a \$1,000.00 security deposit which was in excess of the allowed amount.

The landlord seeks a monetary claim of \$1,037.60 which consists of:

\$600.00	Painting
\$105.00	Cleaning
\$21.96	Evidence, Photographs
\$8.00	Parking
\$81.64	Unpaid Utilities
\$4.31	Evidence, Photographs
\$70.00	Translation Services
\$10.88	Registered Mail
\$598.21	Gas, loss of income, cleaning

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (photographs, parking translation services, registered mail, gas and loss of income) are dismissed.

The landlord withdrew that portion of her claim for cleaning for \$100.00.

The hearing shall proceed on the clarified monetary claim of \$786.64 which consists of:

\$600.00	Painting
\$105.00	Cleaning
\$81.64	Unpaid Utilities

The tenant seeks a monetary claim of \$1,500.00 which consists of:

\$500.00	Unreturned portion of the original \$1,000.00 security deposit
\$1,000.00	Compensation for landlord failing to comply with the Act

The landlord stated that the tenant left the rental unit dirty and damaged requiring cleaning of the rental unit and repairs for damage to the walls. The tenant disputed this claim stating that the rental unit was as is when he moved into the rental unit. The tenant clarified that the noted marks and damages to the walls were present at the beginning of the tenancy before his tenancy began.

Both parties confirmed that no condition inspection report for the move-in or the move-out was completed. Both parties agreed that a walk-thru inspection was conducted with no documentation. The landlord relies upon:

Utilities Invoice	\$67.71
Utilities Invoice	\$55.39
Utilities Invoice	\$121.82
Repair Invoice	\$600.00(Translated from Korean to English)
51 photographs of the rental unit at the end of tenancy	
Cleaning Invoice	\$105.00

The landlord stated that the tenant failed to pay the last two months of utilities totalling \$81.64. The landlord clarified that this amount is based upon the submitted copies of the 3 invoices for utilities for the last two months at 1/3 share of the total costs as per the signed tenancy agreement. The tenant confirmed that 1/3 of the utilities for the last two months were owed to the landlord and was not disputing this portion of the landlord's claim.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord relies heavily upon the 51 photographs which depict the rental unit at the end of the tenancy and her direct testimony as confirmation that the rental unit was provided to the tenant in a clean and undamaged condition. The photographs only show damaged walls and a dirty rental. The tenant has disputed these claims stating that the rental unit was left as it was when he first began his tenancy. I also note that the tenant argued that he never used the oven and that the condition of the oven was the same as when the tenancy began. I find on a balance of probabilities that the landlord has failed in her claim for damages and cleaning. The landlord has failed to provide sufficient evidence to show that the rental property was left dirty and damaged by the tenant. The landlord has not provided sufficient evidence of a clear comparison of the rental unit before and after the tenancy began as a completed condition inspection report for the move-in and the move-out would provide. As such, the landlord's monetary claim for damages and cleaning are dismissed for lack of evidence.

However, the landlord has established a claim for recovery of unpaid utilities as claimed of \$81.64. The tenant acknowledged that utilities for the last two months were not paid and that the landlord is entitled as per the tenancy agreement to seek recovery of 1/3 of the utilities costs from the tenant based upon the submitted utility invoices. As such, the landlord is entitled to \$81.64 from the tenant.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties have confirmed that the landlord accepted an original \$1,000.00 security deposit which was in excess of the allowed amount. Both parties agreed that the landlord returned \$500.00 of the original security deposit to the tenant. The tenant provided affirmed testimony that he provided his forwarding address in writing to the landlord in a letter on June 30, 2016. The landlord disputed this stating that she was only made aware of the tenant's new address upon receiving his application for dispute. The tenant was not able to provide any supporting evidence that his forwarding address in writing was given to the landlord. Both parties agreed that this tenancy ended on June 30, 2016. The landlord applied for dispute on August 5, 2016. In this case, I find that the tenant has failed to provide his forwarding address in writing

to the landlord. As such, I find that the tenant is only entitled to return of the original remaining portion of the security deposit of \$500.00.

As both parties have been somewhat successful in their applications, I decline to make any order for recovery of the filing fee(s).

In offsetting these claims, I authorize the landlord to retain \$81.64 from the remaining \$500.00 portion of the security deposit still held in trust. The tenant is granted a monetary order for the difference of \$418.36.

### Conclusion

The landlord may retain \$81.64 from the security deposit.  
The tenant is granted a monetary order for \$418.36.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be enforced by filing it in the Small Claims Division of the Provincial Court of British Columbia.

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 02, 2017

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Residential Tenancy Branch