



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation from the Landlord and to recover the filing fee.

Only the Tenants appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant, S.M., testified that she personally served the Landlord with the Notice of Hearing and the Application on February 1, 2017. She stated that the Landlord also confirmed receipt of the documents in writing. That document was not before me during the hearing however S.M. testified that she was reading from it when providing evidence with respect to service. S.M. also testified that the Landlord provided the Tenants with her new mailing address on this document.

I accept S.M.'s testimony and I find that the Landlord was personally served with Notice of the Hearing and I proceeded with the hearing in her absence.

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 Tenants' 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. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated this tenancy began on November 1, 2015. Monthly rent was payable in the amount of \$800.00. S.M. testified that rent was reduced to \$400.00 commencing October 5, 2016 due to the condition of the rental unit documentary evidence provided by the Tenant confirms that rent was to be reduced to \$400.00. S.M. testified that they paid the reduced rent of \$400.00 for November 2016 however, the Landlord then issued a 10 Notice to End Tenancy for Unpaid Rent or Utilities. S.M. stated that although they initially filed an Application to dispute the Notice they simply moved from the rental unit on the effective date of the Notice, November 14, 2016.

On the Application for Dispute Resolution filed by the Tenants they indicated that they sought the sum of \$788.00. On the Monetary Orders Worksheet provided in evidence the Tenants confirmed that the \$788.00 related to storage costs necessitated due to a basement flood at the rental unit.

S.M. stated that the basement flooded during the tenancy and as a result they were not able to use the basement for storage. She stated that they had to move their items to off-site storage and paid a total of \$788.00 from April 1, 2016 to November 30, 2016 (including a \$84.00 security deposit). A copy of the receipt for this cost was included in evidence.

### 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 Tenants have 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Based on the undisputed testimony and evidence of the Tenants I find that they are entitled to the \$788.00 sought for the cost of storage of their items after flooding of the rental unit basement. I accept the Tenants' testimony that the rental unit included

storage in the basement, and that as a result of the flood, they were forced to move their items elsewhere. I find they have met the burden of proving they suffered this loss.

As they have been successful, I also award them recovery of the \$100.00 filing fee.

Pursuant to sections 67 and 72 of the *Residential Tenancy Act*, I grant them a Monetary Order in the amount of **\$888.00**. This Order must be served on the Landlord by the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Tenants submitted a letter dated November 8, 2016 wherein they provided the Landlord with their forwarding address. They also provided a copy of the receipt for payment of the security deposit. The Tenants failed to make an application for return of their security deposit and as such the Landlord has not been provided adequate notice of this claim. The Tenants are at liberty to apply for further monetary compensation including but not limited to return of double their security deposit pursuant to sections 38(1) and 38(6) of the *Residential Tenancy Act*.

### Conclusion

The Tenants are entitled to a Monetary Order in the amount of **\$888.00** including compensation for the cost to store their items as a result of a flood at the rental unit and recovery of the filing fee.

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: March 07, 2017

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Residential Tenancy Branch