



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent and utilities as well as damage to the rental unit and to recover the filing fee.

The hearing was conducted by teleconference on May 11, 2017. Only the Landlord and his daughter called into 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.

On January 4, 2017 the Landlord was granted an Order pursuant to section 71 of the *Act* permitting him to serve the Tenants by email. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application as well as his application materials. A copy of his email to the Tenants dated January 11, 2017 was provided in evidence; this email referenced two attachments and the Landlord testified that the attachments: 001.pdf and 002.pdf included his application materials.

I find the Tenants were served with notice of the hearing and I therefore proceeded with the hearing in their 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 Landlord/Tenant'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 a monetary order for unpaid rent and utilities as well as damage to the rental unit?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord provided a copy of the residential tenancy agreement which confirmed this tenancy began December 16, 2014. The Tenants were to pay \$2,145.00 per month in rent. The Landlord testified that the Tenants were also to pay the municipal water utility.

The Landlord also testified that the Tenants failed to pay the rent as required and at the time the tenancy ended the sum of \$3,504.00 was owed in outstanding rent. He also claimed the sum of \$1,817.67 in outstanding water utilities and provided copies of the water bill from the municipality confirming this amount.

At the time of filing for dispute resolution the Landlord indicated he sought the sum of \$17,000.00 in compensation. When he prepared his Monetary Orders Worksheet in support of his application on January 3, 2017, he indicated he sought the sum of \$19,201.67. He confirmed that in both cases he estimated the cost of repairs to the rental unit.

The Landlord testified that the Tenants vacated the rental unit and caused significant damage which he estimated could exceed \$30,000.00. In evidence were photos of the rental unit, but they were very small and in black and white and therefore of limited probative value. He confirmed he has made an insurance claim and that his insurance company has yet to finalize the amount he will receive for compensation, such that he cannot testify to the total amount he will have to pay for damages to the rental unit.

### 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.

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.

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

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.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find, based on the undisputed testimony and evidence of the Landlord that the Tenants failed to pay the rent and the water utility as required by the tenancy agreement. I therefore award the Landlord compensation in the amount of **\$3,504.00** for unpaid rent and **\$1,817.67** for unpaid utilities.

The Landlord conceded that he was not aware of the final cost of the repairs to the rental unit as his insurance company had yet to finalize their contribution. As such, the Landlord was not able to prove the actual amount required to compensate for the claimed loss or to repair the damage.

I therefore dismiss the Landlord's claim for compensation for damage with leave to reapply when the insurance company finalizes their contribution. Should the Landlord reapply for further monetary compensation, he is permitted to serve his Application on the Tenants by email and in accordance with Arbitrator Hendrick's Decision of January 4, 2017.

### Conclusion

I grant the Landlord a Monetary Order in the amount of **\$5,421.67** representing the sum of \$3,504.00 for unpaid rent and \$1,817.67 for unpaid utilities as well as the \$100.00 filing fee. The Landlord must serve the Monetary Order on the Tenants and may file and enforce the Order in the B.C. Provincial Court.

I Order, pursuant to section 71 of the *Act*, that the Landlord be permitted to serve the Monetary Order on the Tenants by email.

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: May 11, 2017

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Residential Tenancy Branch