



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, FF, LAT, LRE, OLC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, damage to the unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or 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 their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

At the outset of the hearing both parties confirmed that the tenant moved out on May 11, 2017. The tenant advised that they were only seeking a monetary order for today's hearing. The landlord also confirmed that she was seeking a monetary order. Both parties also advised that

they wished to be granted the security deposit and the recovery of the filing fee. The hearing proceeded on that basis.

#### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of their security deposit?

Is the tenant entitled to a monetary award as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background, Evidence

The tenants gave the following testimony. The tenants testified that the landlord enter their unit numerous times without their permission. The tenants testified that the landlord and her agents would show up unannounced and would just go into their suite. The tenants testified that the home was given to them in a filthy condition and that it was infested with ants. The tenants testified that the landlord made them feel uncomfortable to live in their own home and they felt that they had to move. The tenants testified that they feel \$6000.00; which includes the return of the security deposit and filing fee is the appropriate amount that they should be awarded for all of the travel cost, moving costs, loss of work and stress to deal with this matter.

The landlord's testimony is as follows. The tenancy began on April 1, 2017 and ended on May 11, 2017. The tenants were obligated to pay \$1450.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$725.00 security deposit. The landlord testified that the tenants did not pay the rent for May. The landlord testified that the tenants gave her short notice that they would be moving out that she should be entitled to June's rent as well. The landlord testified that the tenants did not pay their share of the utilities. The landlord testified that the tenants made her make frivolous repairs and incurred unnecessary costs because of them. The landlord testified that the tenants should be responsible for all the costs she has incurred during their time in the unit.

The landlord is applying for the following:

1.	Unpaid Rent May and June	\$2900.00
2.	Move in Cleaning	250.00
3.	BC Hydro and Fortis Gas	196.00
4.	Maintenance Call Fee	175.00
5.	Toilet tank	234.06

6.	Anxiety management and vitamins	158.78
7.	Miscellaneous requests	46.97
8.	Pesticide spray	10.00
9.	Filing fee	100.00
10.		
	Total	<b>\$4070.81</b>

### 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, in this case each party must provide sufficient evidence to prove their claim. 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. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly I address the tenants claim and my findings as follows.

#### *Tenants Claim for \$6000.00*

The tenants submit that the due to the landlords repeated unauthorized entry into the unit; they no longer felt comfortable in the suite and had to move out. The tenants submit that the unit was in disrepair and was infested with ants. The tenants submit that they incurred travel expenses, moving expenses, loss of work and stress to deal with this matter. The tenants stated that \$6000.00 will cover the return of the security deposit, filing fee and applicable compensation, and they seek that amount.

RM testified that the tenants have not provided any “hard evidence” and that all they have provided is anecdotal allegations and statements. RM testified that the tenants’ digital evidence lacks any merit or logic and that their application should be dismissed as there are no receipts or bills to verify and support the amounts as claimed. I have reviewed all the documentary and digital evidence before me and considered the testimony of the parties and agree with RM that the tenants claim is essentially unsubstantiated allegations that lack sufficient detailed and relevant evidence that meets the four part test as outlined above under Section 67 of the *Act*. Based on the insufficient evidence before me and on a balance of probabilities I hereby dismiss the tenant’s application in its entirety.

I now address the landlord's claims and my findings around each as follows.

Unpaid Rent

The landlord testified that the tenant did not pay the rent for May. The landlord testified that the tenants gave her notice on May 1, 2017 that they would be moving out. The landlord testified that the notice was one day late and that she is entitled to the rent for June. The landlord testified that she did not attempt to re-rent the unit as she decided to sell the home which an offer was accepted on May 12, 2017. The tenants do not dispute that they didn't pay the May rent. I find that the landlord is entitled to the rent for May however, in the landlords own testimony she conceded that she did not make any attempts to mitigate her loss for June and therefore did not comply with Section 7(2) of the Act to mitigate and minimize her losses. In the result I find that the landlord is entitled to May rent but not for June. The landlord is entitled to \$1450.00.

Move In Cleaning

The landlord testified that the tenant was not happy with the cleanliness of the unit and asked the landlord to have it cleaned. The landlord testified that she hired cleaners to clean the suite and the deck at a cost of \$250.00. The landlord acknowledged that the unit was not as clean as she would have liked it when the previous tenants moved out and concedes that the unit needed further cleaning. Residential Tenancy Policy Guideline 1 states that a landlord must provide the suite to the incoming tenant in a clean condition. Based on the above and in the landlords own testimony, I find that the cleaning was necessary and that the landlord is not entitled to the recovery of this cost. This portion of the landlords claim is dismissed.

BC Hydro and Fortis Gas

The landlord testified that the tenancy agreement was that the tenants pay 50% of the utilities. The landlord is seeking \$196.00. The landlord testified that the amount was a guess as she tried to estimate the amount as she has not received the bills yet. As the landlord has not provided an exact amount owing and not shown what the exact amount of loss is, she has not met the four parts required under Section 67 of the Act and I therefore dismiss this portion of her claim.

Maintenance Call Fee

The landlord testified that the tenant complained that several items in the suite were not working correctly. The landlord testified that the contractor found two things wrong which were corrected. As the contractor did find two repairs to conduct the call was not a frivolous one, accordingly; I dismiss this portion of the landlords claim.

Toilet Tank

The landlord testified that the toilet was damaged and that the tenant tried to replace some parts of it but the parts are too large and the toilet tank will need to be replaced. The landlord testified that she received an "estimate" of \$234.06 to conduct the repair but has not done it as of today's hearing. The tenant testified that the toilet is the original one in the home and that it was already damaged. The tenant testified that he did his best to find the right parts but feels that the repair is the landlords' responsibility. As the landlord has not conducted the repair and is unable to provide the actual out of pocket cost or loss that she will incur, she has failed to satisfy all four grounds as outlined in Section 67 of the Act. Based on the insufficient evidence before me I must dismiss this portion of her claim.

#### Anxiety management and vitamins and Pesticide Spray

The landlord is seeking \$158.78 for the stress she has endured with dealing with these tenants and the vitamins to assist her. The landlord testified that she has been a landlord for ten years and that these tenants caused her more stress than any other tenants. The landlord testified that she is also seeking \$10.00 for the Pesticide Spray that wasn't necessary. The tenants deny the allegation. The tenants testified that they were the ones that were in a state of constant stress as the landlord was a difficult person to deal with. The tenants testified that the unit had an ant infestation and that it's the landlords' responsibility to address it. It's clear to me that there are significant issues between the parties and that the relationship is an acrimonious one, however both parties endured the issues and process of filing an application through the Branch. In addition, the landlord testified that she purchased the can of pesticide spray but was unable to provide a receipt to support that claim. The landlord has not provided sufficient evidence to support that the tenants were reckless or negligent to cause her to be in this state or the cost of the pesticide spray and I therefore must dismiss this portion of her application.

#### Miscellaneous Request

The landlord is seeking \$46.97 for the cost of stand up toilet holders. The landlord testified that the tenants requested the standup version and to make the tenants happy she complied and bought them for each bathroom. The tenants dispute this claim. The tenants testified that there weren't toilet holders and that they requested the landlord buy some nice ones. The tenants maintain that it was a request and not a demand. In the landlords own testimony she acknowledged that the tenants asked and that she wanted to make them happy, so she complied. The landlord had the ability to agree or disagree with this request or offer an alternative product, but she didn't. The landlord cannot now seek recovery of costs that she willingly agreed to, accordingly: I dismiss this portion of the landlords claim.

The landlord is entitled to the recovery of the \$100.00 filing fee. The tenants have not been successful in this application.

#### Conclusion

The landlord has established a claim for \$1550.00. I order that the landlord retain the \$725.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for

the balance due of \$825.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety.

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 29, 2017

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Residential Tenancy Branch