



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, O, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed December 15, 2016, wherein the Landlord requested monetary compensation from the Tenants for unpaid rent, damages to the rental unit, and money owed, authority to retain the security deposit, other unspecified relief and to recover the filing fee.

The hearing was conducted by teleconference on June 20, 2017. Only the Landlord's representative, and resident manager, C.L., called into 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.

C.L. testified that she served the Tenants with the Notice of Hearing and the Landlord's Application on December 23, 2016 by registered mail to the forwarding address provided by the Tenants on the move out condition inspection report. A copy of the registered mail tracking numbers for each Tenant is provided on the unpublished cover page of this my Decision. C.L. confirmed that the packages were also sent out by regular mail.

*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 this way are deemed served five days later; accordingly, I find the Tenants were duly served as of December 28, 2016 and I 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'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 authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this tenancy began June 1, 2016 and was to continue for a one year fixed term until May 31, 2017. Monthly rent was payable in the amount of \$2,300.00 per month and the Tenants paid a security deposit in the amount of \$1,150.00. The tenancy agreement also provided that utilities were not included in the monthly rent payment.

Pursuant to clause 3.1 of the Tenancy agreement the Tenants agreed to pay liquidated damages in the amount of \$1,150.00 in the event they ended the tenancy prior to the expiration of the 1 year lease; for greater clarity, I reproduce that clause as follows:

**3.1 LIQUIDATED DAMAGES:** If the Tenant ends or gives notice to end tenancy before the end of the original Term of this Lease, or any subsequent fixed term, or if the Tenant is in breach of the Residential Tenancy Act or a material term of this Lease that causes the Landlord to end the tenancy before the end of the original Term or subsequent fixed term ("Early Termination"), then the Tenant must pay the sum of \$1150.00 to the Landlord as liquidated damages and not as a penalty ("Liquidated Damages"). The Liquidated Damages is an agreed pre-estimate of the Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination. Payment of Liquidated Damages does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant.

C.L. testified that on August 12, 2016 the Tenants stated that they were intending to leave but would stay until a new lease was signed. On October 31, 2016 they sent another note indicating that they would leave at the end of November 2016. C.L. confirmed that the Tenants vacated the rental unit on November 30, 2016.

In the within hearing the Landlord sought the following:

Cleaning	\$315.00
Repairs	\$127.47
Utilities	\$180.00
Liquidated damages	\$1,150.00
Loss of rent for December 2016	\$2,300.00
NSF/Late fee	\$25.00
<b>TOTAL CLAIMED</b>	<b>\$4,122.47</b>

The Landlord was not able to re-rent the rental unit until March 2017. C.L. stated that the Landlord advertised the rental unit as of August 9, 2016 (a copy of the ad was provided in evidence) with a potential occupancy date of September 1, 2016.

C.L. stated that the rental unit is in a rural area without any city services such as garbage collection. She also noted that December is a difficult time to rent as people seldom move during that month; she also confirmed that the weather was particularly cold and may have impacted people's willingness to relocate at that time.

A copy of the move in and move out condition inspection report was provided in evidence. The move out report confirms C.L.'s testimony that the Tenants failed to clean and repair the rental unit as required.

C.L. stated that the Landlord hired third party cleaners to ready the unit for re-rental. In support the Landlord provided a receipt dated December 8, 2016 confirming the cleaning costs for three cleaners for four hours in the amount of \$315.00.

The Landlord also provided a receipt dated December 12, 2016 in the amount of \$127.47 for minor repairs such as re-installing the shower door, replacing light bulbs, repairing a crawl space door, reattaching a towel rack and reinstalling closet doors.

The Landlord also sought the sum of \$180.00 for unpaid utilities for the outstanding electrical invoice. C.L. noted that the Landlord only sought the sum of \$180.00 of the total invoice of \$397.47 for the time period October 25, 2016 to December 22, 2016 (a copy of this invoice was provided 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 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.

I accept the Landlord's undisputed evidence that the Tenants failed to clean and repair the rental unit as required. I therefore award the Landlord the **\$315.00** and **\$127.47** claimed for cleaning and repairs.

I further accept that they did not pay the utilities as required by clause 1.2 of the tenancy agreement. Accordingly, the Landlord is entitled to compensation in the amount of **\$180.00**.

I find that the Tenants vacated the rental unit prior to the expiration of the fixed term. Pursuant to the tenancy agreement, the Landlord is entitled to the liquidated damages in the amount of **\$1,150.00**; accordingly I grant them recovery of this sum.

I also accept the Landlord's evidence that due to the condition the rental unit was left in, as well as the time of year the tenancy ended, the Landlord was not able to re-rent the rental unit for December 2016. Pursuant to the fixed term tenancy the Tenants are liable for the rent for the balance of their term; the Tenants are fortunate that the

Landlords only claimed loss of rent for December 2016. I therefore award the Landlord recover of the December 2016 rent in the amount of **\$2,300.00**.

Clause 2.1 of the tenancy agreement authorizes the Landlord to charge a \$25.00 NSF/Late fee. I therefore award the Landlord the **\$25.00** claimed for this amount.

Having been substantially successful, the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total award of **\$4,222.47** calculated as follows:

Cleaning	\$315.00
Repairs	\$127.47
Utilities	\$180.00
Liquidated damages	\$1,150.00
Loss of rent for December 2016	\$2,300.00
NSF/Late fee	\$25.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$4,222.47</b>

### Conclusion

The Landlord is granted monetary compensation in the amount of **\$4,222.47**.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act* I authorize the Landlord to retain the Tenants' **\$1,150.00** security deposit as partial payment of the amount awarded and I grant the Landlord a Monetary Order in the amount of **\$3,072.47** for the balance due. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: June 23, 2017

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Residential Tenancy Branch