



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNR, FF

### Introduction

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

The hearing was conducted by teleconference on August 24, 2017. Only the Landlords 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.

The Landlord, B.S., testified that her son, G.S., personally served the Tenants with the Notice of Hearing and the Application on March 31, 2017. A copy of the Affidavit of Personal Service for both Tenants was provided in evidence; this affidavit was also witnessed by D.R. The Landlord confirmed that the address at which the Tenants were served was the address they received from the Court Bailiff who moved them.

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

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this tenancy began August 1, 2016. Monthly rent was payable in the amount of \$1,190.00 on the 1<sup>st</sup> of the month.

The Landlord stated that on December 1, 2016 the Tenants stopped paying rent. On February 15, 2017 the Landlord obtained an Order of Possession as well as a monetary order in the amount of \$2,692.50 representing compensation for unpaid rent for December 2016 and January and February 2017 in the amount of \$3,570.00 (the Landlords were also permitted to retain the Tenants' security deposit).

The Landlord stated that the Tenants refused to move and they were forced to obtain a Write of Possession and utilize the services of the court bailiff. The Tenants were removed from the property on March 9, 2017.

The Landlords submitted that the Tenants significantly damaged the rental unit including:

- smoking inside the rental unit;
- writing and scribbling on the walls;
- making holes in the walls;
- urinating on the floors;
- splattering nail polish and paint on the kitchen cabinetry;
- burning the countertops with hot pots
- ripping off the toilet seat and cracking the toilet;
- damaging the doors, door handles and windows
- removing all window treatments including curtain rods and all curtains;
- removing the shower head;
- leaving a truck full of garbage as well as belongings which the Landlord paid to store;

The Landlords also submitted the move in and move out condition inspection report, as well as photos of the rental unit which confirmed the condition at the beginning and end of tenancy.

The Landlord testified that due to the condition of the rental unit the property was not re-rented until May 2017. She further stated that they did not receive rent for May 2017 as the new renters agreed to clean the exterior of the rental unit in lieu of rent. She also confirmed that the rent was reduced by \$140.00 per month as the new renters were willing to move in and clean the home and address the damage left by the Tenants who are the subject of the application before me. The Landlord stated that while they had professional cleaners clean the inside, they were not able to clean the outside as the ground was frozen and covered in snow; she further stated that the Tenants left dirty

diapers and excrement outside and the new renters cleaned that up when the snow melted.

As a result, the Landlords seek compensation for loss of rent for March 2017 and April 2017 and May 2017.

In the within hearing the Landlords filed a Monetary Orders Worksheet confirming they sought compensation for the following:

replacement of bedroom curtains	\$82.74
replacement of entry door mat (kitchen)	\$22.17
repair of holes in drywall	\$82.28
replacement of back entry lock	\$103.18
repair of kitchen flooring	\$38.06
replacement of living room curtain rod and paint	\$94.91
replacement of bedroom curtains, and shower curtain and rod	\$128.76
replacement of living room, utility room and bathroom curtains as well as bathroom mirror	\$146.06
replacement of floor mat and boot mat in entry as well as air fresheners	\$52.61
replacement of front entry deadbolt	\$47.02
replacement of basement padlock	\$28.19
replacement of basement door knob	\$58.24
cleaning and painting supplies	\$174.59
cost to store Tenants' belongings left at rental unit	\$139.50
cost to remove Tenants with services of Bailiff	\$2,800.00
cleaning of rental unit	\$749.70
March 2017 rent	\$1,190.00
April 2017 rent	\$1,190.00
May 2017 rent and value of rent reduction due to damage to rental unit	\$1,680.00
filing fee	\$8,908.01

The Landlord stated that the Tenants are also subject to criminal charges for fraud, assault and uttering threats to police officers for incidents related to the tenancy.

### 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.

Based on the undisputed testimony and evidence of the Landlords, and on a balance of probabilities, I find the Tenants breached section 37 of the *Act* by damaging and failing to clean the rental unit. The evidence submitted by the Landlords confirms the Tenants caused extraordinary damage to the rental unit and engaged in outrageous and unacceptable behavior such as putting holes in walls, urinating on the floors, and spreading nail polish on the kitchen cabinets. Such behaviour may warrant the award of aggravated damages, although notably such a claim was not before me. I therefore award the Landlords the amounts claimed for cleaning and repair of the rental unit, as well as replacement of the items removed by the Tenants at the end of the tenancy (such as the window treatments and door knobs).

I further find that due to the condition of the rental unit, the Landlords were not able to re-rent the unit until May of 2017, and that they accepted a reduced rent from the new renters including allowing them to clean the rental unit in lieu of payment for May of 2017, as well as the lost rental income. I find that in doing so the Landlords satisfied the requirement in section 7 of the *Act* that they minimize any losses.

I accept the Landlords' evidence that the Tenants failed to move from the rental unit after being served the Order of Possession and consequently the Landlords incurred the

cost of a bailiff to remove the Tenants. I find the Landlords are entitled to recovery of the related costs.

I also accept the Landlords evidence that the Tenants left garbage and other items when they vacated the rental unit. The Landlords are entitled to recovery of the cost to remove the Tenants' garbage and store their items as required by the *Act* and the *Regulations*.

I find the Landlords are entitled to the entirety of their claim in the amount of **\$8,908.01**, including recovery of the filing fee. For greater clarity I reproduce their claims as follows:

replacement of bedroom curtains	\$82.74
replacement of entry door mat (kitchen)	\$22.17
repair of holes in drywall	\$82.28
replacement of back entry lock	\$103.18
repair of kitchen flooring	\$38.06
replacement of living room curtain rod and paint	\$94.91
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May 2017 rent and value of rent reduction due to damage to rental unit	\$1,680.00
filing fee	\$8,908.01

Conclusion

The Landlords' application for monetary compensation from the Tenants is granted. The Landlords are granted a Monetary Order in the amount of \$8,908.01. The Landlords must serve this Order on the Tenants and may file and enforce it 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: August 24, 2017

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Residential Tenancy Branch