



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE FORT NELSON REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, 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 damage to the rental unit and to recover the filing fee.

The hearing was conducted by teleconference on September 5, 2017. Only the Landlord's representatives called into the hearing (hereinafter referred to as the "Landlord"). 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 testified that she served the Tenant with the Notice of Hearing and the Application on April 10, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*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 Tenant was duly served as of April 15, 2017 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.

### Preliminary Matter

The Landlord failed to indicate they sought an Order authorizing them to retain the Tenant's security deposit. Documentary evidence filed by the Landlord confirms they informed the Tenant of their intention to apply these amounts to the outstanding balance. Further I accept the Landlord's undisputed testimony that the Tenant agreed that these funds would be applied to our outstanding September 2016 rent.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* I amend the Landlord's Application to request authority to retain the Tenant's security deposit as I find the Tenant would have reasonable anticipated the Landlord sought to retain her security deposit against the amounts owed in the within hearing.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent and damage to the rental unit?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee paid for their application?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began October 1, 2015. Monthly rent was payable in the amount of \$800.00 and the Tenant paid a \$400.00 security deposit.

The Landlord testified that the Tenant failed to pay the full amount of rent for the month of September 2016 and was only able to pay \$400.00. The Landlord stated that the Tenant asked that her security deposit be used towards the outstanding rent for September 2016. The Tenant gave notice to end her tenancy by letter dated and

signed September 23, 2016 (a copy of the Notice to End Tenancy was provided in evidence by the Landlord.)

The Landlord further stated that the Tenant was a single mother of two special needs children and was struggling to clean the rental unit. The Landlord stated that she informed the Tenant she would take care of the cleaning at no charge to try to help her out.

Introduced in evidence was a copy of the move out condition inspection report confirming the condition of the rental unit at the end of the tenancy as well as the Tenant's agreement that the rental unit required cleaning and that there were holes in the drywall.

The Landlord stated that the rental unit was not re-rented until February 2017, due in part to the condition of the rental unit as well as the market in the area in which the rental unit was located.

The Landlord stated that the Tenant agreed to make payments towards the outstanding amount for unpaid rent and damage to the rental unit. A copy of a letter from the Landlord to the Tenant dated January 17, 2017 was provided in evidence and which confirmed the amount of rent owing for September (\$400.00), October (\$650.00 (including a \$150.00 payment)) and repairs, supplies and garbage removal in the amount of \$1,714.72 for a total of \$2,764.72 owing. This document further confirmed the \$400.00 security deposit as being used towards the amounts outstanding such that a further \$2,364.72 was owing.

The Landlord confirmed that aside from a \$150.00 payment in October (reflected above as the total rent for October is \$800.00) the Tenant failed to make any further payments towards the outstanding amount. She stated that as the Tenant failed to pay as required they applied for dispute resolution.

### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlords undisputed evidence that the Tenant failed to clean the rental unit as required and left the rental unit damaged at the end of the tenancy, such that the Landlord incurred the cost of \$1,714.72 in related repairs. Documentary evidence submitted by the Landlord confirms that these repairs related to: replacing and painting trim in the rental unit; installing curtain rods; patching holes in the walls; repairing textured walls; removal of garbage; and, repainting, replacing fixtures, threshold, window molding, door knobs and lights. I therefore find the Landlord is entitled to the **\$1,714.72** claimed.

I find, based on the testimony of the Landlord's representatives, as well as the letter to the Tenant dated January 9, 2017, that \$1,050.00 in rent is owed from the Tenant to the Landlord including \$400.00 for September and \$650.00 for October. I therefore award the Landlord monetary compensation for the **\$1,050.00** in outstanding rent.

Having been successful in their application I award the Landlord recovery of the **\$100.00** filing fee.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,864.72**. Pursuant to sections 38 and 72 of the *Residential Tenancy Act* I authorize the Landlord to retain the Tenant's security deposit of \$400.00 towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,464.72** calculated as follows:

repairs and materials	\$1,714.72
outstanding rent for September 2016	\$400.00
outstanding rent for October 2016	\$650.00
filing fee	\$100.00
total compensation	\$2,864.72
<i>less security deposit</i>	\$400.00
<b>total monetary order</b>	<b>\$2,464.72</b>

The Landlord must serve the Monetary Order on the Tenant 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: September 22, 2017

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Residential Tenancy Branch