



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 715540 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 26, 2017, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on July 14, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site or property;
- an order that the Landlord be permitted to retain all or part of the pet damage deposit or security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.S., an agent. A former agent of the Landlord, S.A., attended the hearing as a witness. The Tenants were represented at the hearing by D.W. All parties giving testimony provided a solemn affirmation.

The parties each agreed they had been served with the applicable documents and evidence. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with documents and evidence for the purposes of the *Act*.

No issue was raised with respect to service or receipt of the documents upon which the parties intended to rely. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

For greater clarity, the Amendment to an Application for Dispute Resolution, referred to above, purported to change the name of the Applicant. The Landlord named in the original Application was an agent of the former owner of the rental unit but no longer acts in that capacity. During the hearing, and on behalf of the former owner of the property, L.S. confirmed the numbered company is the correct Landlord, and that he is an agent of the numbered company. Pursuant to section 64 of the *Act*, I amend the Landlord's Application to reflect the correct legal name of the Landlord.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to an order allowing them to retain all or part of the pet damage deposit or security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on March 1, 2015, and ended when the Tenants vacated the rental unit on April 1, 2017. Rent in the amount of \$1,700.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$850.00, which the Landlord holds.

Particulars of the Landlord's claim for \$3,487.00 were provided on an unsigned *Notice of Security Deposit Deductions Accepted by the Tenant* document, a copy of which was submitted with the Landlord's documentary evidence. It confirmed the Landlord's claim was for cleaning and repairs to the rental unit at the end of the tenancy. However, on behalf of the Landlord, L.S. confirmed the cleaning and repair costs were not incurred. Rather, L.S. testified that the Landlord suffered losses because damage to the rental unit resulted in a lower sale price. The Landlord relied on a letter from a realtor, D.K., who suggested the condition of the rental unit resulted in a sale price \$5,000.00 below the market price. A copy of the letter was submitted with the Landlord's documentary evidence. L.S. appeared to have no knowledge of or interest in the claim for cleaning and repairs.

However, the Landlord tendered S.A. as a witness. She testified that the move-out condition inspection was difficult. There were "small amounts" of damage throughout the rental unit. Specifically, S.A. testified the rental unit was not clean, and that the

walls were poorly patched and needed to be painted. In support, S.A. referred me to a number of photographic images of the interior of the rental unit.

On behalf of the Tenants, D.W. disputed the Landlord's claim. He disagreed with the Condition Inspection Report and testified that the damage complained of was wear and tear that is expected in a two year tenancy. D.W. also noted that the cleaning and repairs was not done, and that there was insufficient evidence in support of the sale price being impacted by the condition of the rental unit. The Tenants provided a Multiple Listing Service document indicating the rental unit was offered for sale for \$35,000.00 less only three months before the eventual sale, suggesting the maximum price was achieved. D.W. also suggested the realtor who provided the letter was biased as he is the realtor for the corporate landlord. He also suggested that many of the Landlord's photographic images were enlarged to the point that it was impossible to discern what was being depicted, or did not actually depict what was claimed. With respect to cracks and exposed drywall screws, D.W. suggested this was caused by settling of the rental property.

#### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the

Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. Specifically, I find there is insufficient evidence to conclude that the cleaning and repairs resulted in any loss to the Landlord. I find that the letter does not satisfy me that the damage caused the sale price to be reduced, and I note the realtor did not attend the hearing to provide additional testimony. Certainly, the evidence of L.S. confirmed the repairs were not completed, and that the Landlord took reasonable steps to minimize any loss. Accordingly, I find that the Landlord's Application is dismissed, without leave to reapply.

When a landlord's application to retain the security deposit is dismissed, Policy Guideline #17(C)(1) stipulates that an arbitrator must order the return of the security deposit to the tenant. As the Landlord's Application has been dismissed, I order the Landlord to pay the security deposit to the Tenant. Accordingly, the Tenants are granted a monetary order in the amount of \$850.00.

#### Conclusion

The Tenants are granted a monetary order in the amount of \$850.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2017

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Residential Tenancy Branch