



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding J.D. NELSON & ASSOC. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

O, FF (Tenants' Application)  
OPR, MNSD, MNDC, MND, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution the Tenants requested to recover their filing fee and other unspecified relief. In the Landlord's Application for Dispute Resolution they sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 11, 2017 (the "Notice"), authority to retain the Tenants' security deposit, a Monetary Order for damage to the rental unit and to recover the filing fee.

The hearing was conducted by teleconference on October 3, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. 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 respective 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—Tenant's Telephone Connection to Hearing

During the hearing the Tenants disconnected from the line. At no time did I hear evidence or submissions from the Landlord in the absence of both Tenants. For instance, the Tenant Z.K. exited line at 9:25 a.m. as his phone battery died and did not reconnect until 9:45 a.m. The Tenant K.C. remained on the line during this time. Near the end of the hearing both Tenants disconnected from the line for a short time and I did not hear any evidence or submissions from the Landlord while they were both disconnected.

### Preliminary Matter—Relief Sought

The parties confirmed that the Tenants vacated the rental unit in August 2017. As such, the Landlord's Application for an Order of Possession was no longer required. Similarly, although the Tenants indicated they sought "other relief" on their Application for Dispute Resolution, the details of dispute section suggests they were seeking to cancel the notice to end tenancy; as such this relief was also no longer applicable.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with 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 confirming that this tenancy began April 1, 2017. The agreement provided that it was a 12 month tenancy ending on August 31, 2017. The Landlord testified that the "12 month" was a typo as the intent was that the tenancy was to end on August 31, 2017. The agreement also provided that monthly rent was \$990.00 payable on the first of the month; and, the Tenants paid a \$500.00 security deposit.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on July 19, 2017; the effective date of the Notice was August 31, 2017. The Notice informed the Tenants they had 10 days in which to apply for dispute resolution. The Tenants applied for Dispute Resolution on July 20, 2017 although they did not indicate they were disputing the 1 Month Notice. The Tenant, Z.K, testified that he was told by staff to claim "other relief" and recovery of the filing fee, and not to note that he was disputing the notice to end tenancy. I find it very unlikely that he would have received such information as it is contrary to the *Act*, and, had they not already vacated, would have resulted in an end to the their tenancy pursuant to the conclusive presumption in section 46(5) of the *Act*.

The Landlord testified that on August 11, 2017 he received notice that the Tenants had cancelled their post-dated cheque for the August rent payment. The Landlord then issued a 10 Day Notice as the Tenants failed to pay rent for August 2017. The effective date of the Notice was August 21, 2017.

The Landlord confirmed that his property manager went into the rental unit on August 17, 2017 after posting a Notice of Entry on August 15, 2017. The property manager informed the Landlord that the rental unit appeared to be occupied as there were still a lot of personal items in the bathroom as well as furniture.

The Landlord confirmed that he issued another Notice of Entry for August 23, 2017. He confirmed that he personally entered the rental unit at that time. He stated that the rooms still had furniture, as well as personal items in the bathroom.

Introduced in evidence was an email from the Landlord to the Tenants on that date informing them that items remained in the rental unit. In response the Tenant, Z.K., wrote:

"I have moved out on the morning of the 16<sup>th</sup> of August. I left my key in the mailbox. We didn't have means to take said furniture, you have permission to do as you wish with them..."

Introduced in evidence was an email from the Landlord to the Tenant, Z.K., wherein he informed the Tenant that a move out inspection would occur on August 25, 2017 at 2:00 p.m. The Landlord testified that the Tenants failed to attend on the 25<sup>th</sup> such that he gave them another opportunity on August 28, 2017 at 10:00 a.m. He confirmed that the Tenant did not respond to his emails, nor did they attend either inspection.

The Landlord testified that he was able to rent the rental unit on September 1, 2017. The Landlord stated that the Tenant, K.C., paid his half of the rent, \$495.00, such that he sought compensation for the balance of the rent owing.

The Landlord also sought \$25.00 for the N.S.F. fee as permitted by clause 19 of the tenancy agreement.

The Landlord also sought replacement of the window in the amount of \$50.00. This is noted on the move out condition inspection report as being "cracked and broken"; as well, introduced in evidence was a photo of the broken window.

The Landlord also sought the cost of cleaning the carpets in the amount of \$65.00. Introduced in evidence was a copy of a photo of the carpet which indicated the carpets were stained and required cleaning. The Landlord confirmed that the stains were removed by the carpet cleaning.

The Landlord also sought the cost to remove a mattress which was left in the rental unit. He stated that the Tenant, C.K. gave the property manager \$15.00 towards the cost of removing the mattress. The Landlord stated that the total cost was \$35.00 and as such he sought the balance of \$20.00.

The Landlord also sought the cost to clean the rental unit the amount of \$210.38. Introduced in evidence was a copy of a receipt dated August 30, 2017 confirming the Landlord was charged this amount. The Landlord stated that the rental unit was not cleaned by the Tenants and required significant cleaning. The condition inspection report confirmed that cleaning was required.

The Landlord also sought the sum of \$13.09 for cleaning the oven. A photo submitted by the Landlord showed baked on grease in the oven.

The Landlord sought the sum of \$168.00 to paint the walls. The Landlord noted that there was a large chip in the den, as well as holes in the walls in the master bedroom; which the Landlord stated required repair and repainting. The condition inspection report indicated there were 31 holes in the master bedroom walls and 20 in the second bedroom. The Landlord submitted that this was an "unreasonable amount". Notably, the Move in Condition Inspection Report indicates the master bedroom is show as having 27, and the second bedroom had 2. The Landlord testified that the rental unit had been painted two years prior to this tenancy beginning.

In response to the Landlord's claims, Z.K. testified a follows. He stated that he moved out by August 5, 2017. I drew his attention to the fact that his email of August 24, 2017 indicated he had moved out on August 16, 2017. He stated that was incorrect.

In response to the Landlord's claim for \$25.00 for the N.S.F. fee, the Tenant stated that he put a "hold" on his cheque on the advice of a "legal attorney" who told him not to pay rent until this was all sorted out.

In response to the Landlord's claim for \$50.00 for the cost to replace the window, Z.K. stated that when he moved out the window was not broken and he suggested that it was likely the upstairs neighbour who broke it while mowing the lawn.

In response to the Landlord's claim for \$65.00 for cleaning the carpets, the Tenant stated that he did not see any stains when they moved out. He then claimed the carpets were stained and had burn marks when they moved in.

In response to the Landlord's claim for \$20.00 to remove the mattress, Z.K., stated that it was between the Landlord and his roommate, C.K.

In response to the Landlord's claim of \$210.38 for cleaning of the rental unit the Tenant stated that they cleaned the rental unit and any dirt that was there was caused by the Landlord after they moved out.

Z.K. stated that they did not use the oven at all.

In response to the Landlord's claim to paint the walls, Z.K. stated that there were a lot of holes in the walls when they moved in and they did not put any more holes in. He further stated that they used painters tape to affix anything new.

C.K. also testified. He stated that he was told by the manager that it would cost \$10.00 to remove the mattress and he decided to give \$15.00. He also stated that he told the manager to donate the furniture to any of the thrift stores and to "pick anyone".

C.K. stated that he did not have anything further to add to Z.K.'s response.

### 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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I accept the Landlord's evidence that the Tenants' personal items remained in the rental unit until August 24, 2017. I further find, based on the email exchange between the parties that the Landlord was not aware the Tenants had vacated and given up possession of the rental unit until he received the email from Z.K. on August 24, 2017. While it may be the case Z.K. moved out earlier he did not give the Landlord any notice of this.

I accept the Landlord's testimony that he was not able to re-rent the unit until September 1, 2017 and I therefore award the Landlord the **\$495.00** claimed for the loss of rent for August 2017.

The Tenants put a hold on their August 2017 cheque such that the cheque was returned N.S.F. Pursuant to the tenancy agreement the Landlord is entitled to the **\$25.00** claimed and I therefore award him recovery of this sum.

I accept the Landlord's evidence that the window was broken at the end of the tenancy. I find it more likely this was caused by the Tenants rather than by a third party. I therefore award the Landlord the **\$50.00** claimed.

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 find, based on the evidence before me and the testimony of the parties that the Tenants failed to honour their obligations pursuant to section 37. I accept the Landlord's evidence that the Tenants did not clean the rental unit as required and left personal items as well as large furniture such that the Landlord incurred the cost of cleaning and removal costs. The Move out Condition Inspection Report and photos submitted by the Landlord, as well as the Landlord's representatives' testimony, confirm the condition of the rental unit as requiring cleaning and I therefore award the Landlord the **\$65.00** claimed for cleaning the carpets, the **\$20.00** claimed to take the Tenant's mattress to the dump, and the **\$210.38** claimed for cleaning the rental unit as well as the **\$13.09** claimed to clean the stove.

*Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* addresses the issue of nail holes and provides as follows:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the Move In Condition Inspection Report filed in evidence, I find the Tenants did not put an unreasonably number of nail holes in the walls. I therefore dismiss the Landlord's claim for the \$168.00 cost to repaint two walls in the rental unit.

As the Landlord has been substantially successful I award them recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$978.47** for the following:

balance of August rent	\$495.00
N.S.F. fee	\$25.00

window replacement	\$50.00
steam cleaning of carpets	\$65.00
disposal of mattress	\$20.00
cleaning of rental unit	\$210.38
cleaning of stove	\$13.09
filing fee	\$100.00
<b>TOTAL</b>	<b>\$978.47</b>

Pursuant to sections 38 and 72 of the *Residential Tenancy Act* I authorize the Landlord to retain the Tenants' \$500.00 security deposit in partial satisfaction of the amounts claimed and I award the Landlord a Monetary Order for the balance due in the amount of **\$478.47**. 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: October 6, 2017

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Residential Tenancy Branch