



# 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      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for unpaid rent and damage to the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on October 24, 2017. Only the Landlord's representative, S.H., called into the hearing. She advised that she is the property manager for the subject rental unit and has authority to act on the Landlord's behalf. For the purposes of this my Decision I will refer to S.H. as the "Landlord". The Landlord gave affirmed testimony and was 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 for Dispute Resolution on May 19, 2017 by sending the documents by registered to the forwarding address provided by the Tenant on the move out condition inspection report. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 May 24, 2017 and I proceeded with the hearing in her 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 Tenant?
2. What should happen to the Tenant's 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 the following: this tenancy began January 3, 2017; monthly rent was payable in the amount of \$900.00; and, the Tenant paid a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$450.00.

Also provided in evidence was an Addendum to the Tenancy Agreement which provided that the Tenant was responsible for yard maintenance.

The Landlord testified that the Tenant failed to pay rent for May 2017 and when the Landlord enquired as to the rent payment the Tenant stated that she had moved out of the rental unit.

The Landlord stated that the following week she performed the move out condition inspection with the Tenant in attendance. A copy of the report was provided in evidence and confirmed the condition of the rental at the time the tenancy ended; the report also confirmed the Tenant's agreement that the report accurately reflected the condition of the rental. The Landlord also provided in evidence photos of the condition of the rental unit confirming the contents of the move out condition inspection report.

The Landlord stated that the rental unit was re-rented approximately one month ago. She confirmed that the community in which the rental unit is located has a 40% vacancy rate such that it is difficult to re-rent units when they become available.

The Landlord sought compensation for the following:

unpaid rent for May and June 2017	\$1,800.00
cleaning of the rental unit	\$126.00
removing items left by Tenant	\$84.00
dump loads	\$10.50
drywall repair	\$210.00
supplies	\$42.00
yard clean up	\$252.00
trim	\$10.50
<b>TOTAL CLAIMED</b>	<b>\$2,535.00</b>

The Landlord also sought recovery of the \$100.00 filing fee in addition to the amounts claimed above.

### Analysis

After consideration of the Landlord's undisputed 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.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

#### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The Landlord confirmed that the Tenant did not provide written notice to end the tenancy and did not provide 30 days' notice; accordingly, she did not end the tenancy in accordance with the *Act*. Further, while she may have vacated the rental unit, the effective date of her verbal notice was June 30, 2017. Accordingly I find the Landlord is entitled to compensation for loss of rent for May and June 2017.

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.

**Section 32** of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the evidence before me, I find that the Tenant failed to leave the rental unit clean and undamaged as required by sections 32 and 37 of the *Act*.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I am satisfied that the rental unit was left in a condition which required cleaning and repairs and I therefore award the Landlord the amounts claimed.

I find the Landlord has met the burden of proving the entirety of her claim and I therefore also award her recovery of the filing fee pursuant to section 72 of the *Residential Tenancy Act*.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,635.00** for the following:

unpaid rent for May and June 2017	\$1,800.00
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cleaning of the rental unit	\$126.00
removing items left by Tenant	\$84.00
dump loads	\$10.50
drywall repair	\$210.00
supplies	\$42.00
yard clean up	\$252.00
trim	\$10.50
filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$2,635.00</b>

The Landlord may retain the Tenant's \$450.00 security deposit and \$450.00 pet damage deposit as partial payment of the amounts awarded and is awarded a Monetary Order in the amount of **\$1,735.00** for the balance due. This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

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 27, 2017

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Residential Tenancy Branch