



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MND MNR MNSD SS FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 8, 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;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to keep all or part of the pet damage deposit or security deposit;
- an order allowing the Landlord to serve documents in a different way than required by the *Act*; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf. The Tenant attended the hearing on his own behalf and was assisted by a support worker, S.T. The parties provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Application package and subsequent documentary evidence packages were served on the Tenant by registered mail. The documents were sent to the forwarding address provided by the Tenant, which was the office of the Tenant's outreach worker. The Tenant and S.T. confirmed receipt.

The Tenant submitted a documentary evidence package in response to the Application. According to the Landlord, the package was sent to the Landlord by Express Post on September 21, 2017. The Landlord confirmed receipt on that date.

No issues were raised with respect to service or receipt of the above documents. 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

The Landlord requested an order allowing her to serve documents in a different way than required by the *Act* (SS). However, no issues were raised during the hearing with respect to service or receipt of documents. Accordingly, I have not considered this aspect of the Landlord's Application further.

In addition, the Landlord's Application discloses a claim for an estimated \$380.00. However, in a breakdown of the Landlord's costs, the Landlord also sought to recover various costs relating to preparation for the hearing. These included costs incurred for photographic evidence, transportation costs, the Landlord's time to prepare the Application, and registered mail charges. These items were discussed with the Landlord, who was advised these are not compensable under the *Act*. Accordingly, these items have not been considered. The items summarized below are what remained of the Landlord's claim.

#### 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 a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order allowing them to retain all or part of the pet damage deposit or security deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed that the tenancy began on November 13, 2015, and ended when the Tenant vacated the rental unit on or about February 28, 2017. The rental unit was newly renovated at the beginning of the tenancy. Rent in the amount of \$700.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Landlord's claim for \$380.00 was summarized in her evidence. First, she claimed \$76.85 for unpaid BC Hydro expenses from November 13 to December 8, 2015. The Landlord testified that rent did not include utilities, and that BC Hydro was not put into the Tenant's name until December 9, 2015. A detailed calculation based on daily usage was provided.

In reply, the Tenant disagreed with this aspect of the Landlord's claim, testifying that he paid his BC Hydro bills directly at the bank.

Second, the Landlord claimed \$46.44 for floor wax and an applicator used to repair scratches in the floor in the rental unit. In support, the Landlord provided a copy of the move-in condition inspection report, which confirmed the rental unit was "new" when the Tenant moved in. The Landlord also submitted photographic images depicting the condition of the floor, and a copy of the receipt for the purchase of the product.

In reply, the Tenant suggested the scratches were normal wear and tear.

Third, the Landlord claimed \$150.00 to clean the rental unit. She based this amount on 5 hours of cleaning at \$30.00 per hour. Specifically, the Landlord testified she had to clean throughout the rental unit, including:

- the oven
- the fridge
- mildew in the shower
- mold in a door jam
- blinds
- behind the dryer

The Landlord also testified she had to remove some of the Tenant's belongings left behind after the Tenant vacated the rental unit. In support, the Landlord referred me to photographic images depicting rental unit.

In reply, the Tenant's support working indicated that a cleaning team attended the rental unit on February 28, 2017. She referred to a letter from K.O., a support worker, which was submitted with the Tenant's documentary evidence. It stated that the rental unit was cleaned "to the best

of our ability...the suite looked extremely clean and in like-new condition.” Colour photographs depicting the interior of the rental unit were included with the Tenant's documentary evidence.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested that she be permitted to apply the security deposit held to any monetary order I make.

### 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.

With respect to the Landlord's claim for \$76.85 for BC Hydro charges from November 13 to December 8, 2015, I find the Landlord is entitled to the amount claimed. As noted by the Landlord, utility charges were not included in rent. The BC Hydro service was in the Landlord's name until the Tenant took over on December 9, 2015. The Landlord's calculation of the amount owed for the above period was detailed and based on daily usage. Although the Tenant acknowledged paying his own utility charges through his bank, he did not testify that BC Hydro was reimbursed to the Landlord during the above period. I find the Landlord is entitled to a monetary award in the amount of \$76.85.

With respect to the Landlord's claim for \$46.44 for a cleaning product to repair scratches on the floor, I find the Landlord is entitled to the amount claimed. As confirmed in the move-in condition inspection report, the rental unit was new at the beginning of the tenancy. However, the Landlord adduced photographic evidence of scratches on the floor and a receipt for the cleaning product used. Although the Tenant submitted this was normal wear and tear, I disagree. I find the Landlord is entitled to a monetary award in the amount of \$46.44.

With respect to the Landlord's claim for \$150.00 to clean the suite, I find that the Landlord is partially successful. The Landlord testified to the areas in the rental unit that needed further cleaning. She submitted photographic evidence in support. However, the photographic images relied upon were submitted by fax. Accordingly, they appeared in black and white, and were grainy. The Tenant submitted a letter suggesting the rental unit was clean at the end of the tenancy, as well as clear colour photographic images of the interior of the rental unit. However, even the Tenant's evidence confirms some cleaning required. Accordingly, I find a more appropriate amount to award to the Landlord to be \$75.00.

As the Landlord has been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that she is allowed to apply the security deposit in partial satisfaction of her claim. However, Policy Guideline #17 states:

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit...*

[Reproduced as written.]

Accordingly, pursuant to section 67 of the *Act* and Policy Guideline #17, I find the Tenant is entitled the return of the balance of the security deposit, or \$101.71, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Utility charges:	\$76.85
Floor wax and applicator:	\$46.44
Cleaning:	\$75.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
<b>TOTAL:</b>	<b>(\$101.71)</b>

I order the Landlord to return this amount to the Tenant forthwith.

### Conclusion

The Landlord is ordered to return the balance of the security deposit, or \$101.71, to the Tenant forthwith. In support, the Tenant is granted a monetary order in the amount of \$101.71, which 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: October 2, 2017

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Residential Tenancy Branch