



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 4, 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;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing in person. The Tenants were represented at the hearing by D.F.H. The Landlord and D.F.H. provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Application package was served on the Tenants by registered mail. D.F.H. acknowledged receipt on behalf of the Tenants. The Tenants did not submit documentary evidence in response to the Application. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served on the Tenants for the purposes of the *Act*.

The parties were provided with a full 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.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to retain all or part of the security deposit or pet damage deposit?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed that a fixed-term tenancy was in effect from January 1, 2016, to April 30, 2017. The parties confirmed the tenancy continued on a month-to-month basis thereafter. However, according to the Landlord, the tenancy ended when the Tenants vacated the rental unit without notice on or about July 21, 2017. At that time, rent in the amount of \$900.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00, which the Landlord holds.

The Landlord's monetary claim was set out on a Monetary Order Worksheet, dated August 4, 2017. First, the Landlord claimed \$933.44 to replace a window in the rental unit directly above the Tenants' unit. He testified that on or about July 10, 2017, one or both of the Tenants threw rocks through the windows of the rental unit above, causing damage. There had been some tension between the Tenants and the occupants above. The Landlord stated further that police attended the scene and that J.A.D., who was not present at the hearing, took responsibility for the damage caused. In support, the Landlord submitted a receipt for the window repairs, which he testified has been paid.

In addition, the Landlord also testified the move-out condition inspection took place on July 24, 2017. A copy of the Condition Inspection Report was submitted with the Landlord's documentary evidence. The Landlord indicated that while J.A.D. agreed with the report, he did not agree that the Landlord was entitled to retain the security deposit. D.F.H. denied the Tenants participated in any condition inspection.

In reply, D.F.H. denied responsibility for the window damage, noting the police did not charge them. However, D.F.H. did acknowledge the tenants above had previously complained about noise made by the Tenants' baby.

Second, the Landlord claimed \$1,362.93 to clean and repair damage in the rental unit after the Tenants moved out. According to the Landlord, the Tenants had punched holes in walls and left the unit in poor condition. The receipt submitted into evidence indicated repair or replacement of walls and ceiling tiles, a bedroom door, kitchen closet door, and cleaning in the bathroom and kitchen. The Landlord confirmed the work has been paid for.

In reply, D.F.H. testified that the inspections indicated on the Condition Inspection Report submitted by the Landlord were not completed as claimed.

Third, the Landlord made claims of \$140.33 and \$325.15 for plumbing charges incurred during the tenancy. Receipts were submitted in support. The first, dated May 25, 2017, indicates removal of clogs in the bathroom and kitchen plumbing that were "very difficult to get through". The second, dated June 26, 2017, refer to removal of a hairball from the Tenants' bathroom and replacement of kitchen faucet as it was leaking into the cabinet.

In reply, D.F.H. testified the rental unit was already in poor condition when the Tenants moved in. She also suggested any number of plumbing issues could have been the cause of the blockages.

Fourth, the Landlord claimed \$180.74 to replace and re-tool locks on the door to the rental unit. He testified that one of the locks on the door had been replaced.

In reply, D.F.H. testified the Tenants did not replace the locks. Rather, she advised that, despite requests made asking the Landlord to replace her lost key, the Landlord did not provide her with a replacement key.

Fifth, the Landlord claimed \$874.99 on behalf of the tenants above, whose personal belongings were damaged when rocks were thrown through the window of their rental unit.

In reply, D.F.H. again stated the Tenants were not responsible for the damage as they did not throw any rocks.

Sixth, the Landlord claimed \$900.00 for rent for the month of August 2017. He testified that the Tenants moved out of the rental unit, without notice, on or about July 21, 2017. Further, the Landlord testified that he was unable to rent the unit until September 2017, due to the damage and cleaning required.

In reply, D.F.H. testified that the parties had a written agreement to end the tenancy at the end of July 2017.

The Landlord also sought to recover the \$100.00 filing fee paid to make the Application, and requested that he be permitted to retain the security deposit in partial satisfaction of the claim.

### 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 Tenants. 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 \$933.44 to replace windows, I find there is insufficient evidence before me to conclude the Landlord is entitled to this amount. The testimony of the parties was in direct conflict. The Landlord testified that J.A.D., who did not attend the hearing, took responsibility for the damage. On behalf of the Tenants, D.F.H. denied responsibility for the window damage. I also note the Condition Inspection report submitted by the Landlord did not specifically refer to window damage. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,362.93 to clean and repair damage in the rental unit, I find the Landlord is entitled to recover this amount. Although D.F.H. denied the condition inspections occurred as alleged, the damage was reflected on the Condition Inspection Report submitted by the Landlord and signed by J.A.D. This aspect of the claim was also supported by an itemized receipt for labour and materials

With respect to the Landlord's claims for \$140.33 and \$325.15 for plumbing charges incurred during the tenancy, I find there the Landlord is entitled to recover these amounts, which total \$465.48. Although D.F.H. submitted there could have been other causes of the clogged plumbing, notes made on the receipts suggest it is more likely than not that the clogs were caused due to the Tenants' neglect.

With respect to the Landlord's claim for \$180.74 paid to replace and re-tool locks on the door to the rental unit, I find there is insufficient evidence to conclude the Landlord is entitled to recover this amount. The Condition Inspection report submitted by the Landlord did not address locks, and D.F.H. denied the Tenants changed the locks. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$874.99 made on behalf of the tenants living above for damage allegedly caused by the Tenants, I find there is insufficient evidence before me to conclude the Landlord is entitled to make this claim. Section 6 of the *Act* confirms the rights, obligations and prohibitions established under the *Act* are

enforceable between a landlord and tenant, not between tenants. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$900.00 for unpaid rent, I find the Landlord is entitled to recover this amount. The Landlord testified the Tenants moved out without notice on July 21, 2017, and that he was unable to re-rent the unit until September 1, 2017. Although D.F.H. testified there was a written agreement to end the tenancy, no such document was submitted into evidence.

As the Landlord has been successful, I grant an award in the amount of \$100.00 in recovery of the filing fee paid to make the Application. Further, I order that the Landlord may retain the security deposit in partial satisfaction of the claim. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,378.41, which has been calculated as follows:

<b>Item</b>	<b>Amount allowed</b>
Clean and repair unit:	\$1,362.93
Plumbing charges:	\$465.48
Unpaid rent:	\$900.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$450.00)
<b>TOTAL:</b>	<b>\$2,378.41</b>

### Conclusion

The Landlord is entitled to a monetary order in the amount of \$2,378.41. The monetary 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: February 15, 2018

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Residential Tenancy Branch