



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord stated that a second documentary evidence package was served to the tenants in person. The tenants disputed not receiving this package. Both parties agreed that the landlord served a third documentary evidence package via Canada Post Registered Mail. The tenants submitted two late documentary evidence submissions via courier on March 15, 2018 (one a set of photographs, the second a handwritten statement, screen shots of social media posts and a copy of a July 7, 2017 RTB Decision). The tenants stated that due to health issues, N.D. was unable to file the documentary evidence prior to the 7 day limitation period before the scheduled hearing date. The landlords confirmed receipt of one late documentary evidence package received on March 13, 2018, but clarified that no photographs were received. The tenant stated she was unsure if the photographs were submitted to the landlords.

I accept the affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package as per sections 88 and 89 of the Act. I find that the landlord's second documentary evidence package was not served upon the tenants as there is no evidence of service and as such, this second package by the landlord is excluded from consideration. I also find that the tenant's documentary evidence package (regarding photographs) is excluded. The landlord has disputed receiving these photographs which the tenants have failed sufficient evidence of service.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2016. The monthly rent was \$730.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$365.00 was paid.

The landlord seeks a monetary claim of \$921.18 which consists of:

\$150.00	Painting
\$60.00	Repair Holes in walls (\$15.00/ hr @ 4 hours)
\$187.50	Cleaning (\$15.00/ hr @ 12.5 hours)
\$323.68	Cost of Materials
\$100.00	Carpet Cleaning

The landlords claim that the tenants vacated the rental unit on August 16, 2017 and that they were informed by another tenant (underneath) on August 17, 2017 (early in the morning) who notified them that water was pouring out from her ceiling from the tenant's unit. That tenant found all the sinks plugged and water left on in the bathroom. The landlords discovered fist sized holes and hundreds of little holes throughout the apartment. The rental premises was left filthy with broken blinds, stained carpet, unscrewed screws in the kitchen cupboards. The landlords stated that all of the plugs

from the sinks and tub were removed by the tenants. The landlords claim that the rental premises required extensive cleaning, wall repairs and re-painting of the walls.

The tenants dispute the landlord's claims stating that the water leak was the result of roots entering the water pipes. The tenant confirmed that 1 hole in 1 wall was caused by her daughter and that the landlord as a matter of practice paints the rental between tenancies. The tenants provided affirmed testimony that they had caused 2 holes in the walls and disputes the landlord's claims that there were 4 or 5 holes in the walls. The tenant disputes the landlord's claim for cleaning as she was not allowed to clean the unit at the end of tenancy. The tenants argued the landlord's receipts as they were bought on August 17, 2018 prior to the end of tenancy. The tenants were unable to clarify how this was relevant to the receipts and invoices provided by the landlords. The tenants also disputed that the steam cleaning claim that this was not a condition of the tenancy agreement but that it was agreed to with the landlord at the end of tenancy to be deducted from the security deposit.

The landlord argued that the painting of the rentals was not a practice of the landlords. The landlords clarified that painting only occurred after several years of a tenancy, when touch up paint was required or when it was required due to damage. The landlord argued that the tenancy ended as a result of the settlement agreement to end the tenancy on August 18, 2017.

In support of the landlords' claims the landlords have provided:

- A copy of a letter dated August 22, 2017 re:renumeration...landlord's agents are reimbursed for travel expenses at \$0.50/km for travelling to Kamloops to purchase items not available locally for the rental unit

- A copy of a receipt/invoice dated August 21, 2017 for \$55.41

- A copy of an invoice dated August 18, 2017 for \$67.87, re:cleaning supplies

- A copy of a receipt dated August 23, 2017 from Home Depot for replacement blinds

- A copy of the first and last page of a Residential Tenancy Agreement

- A copy of a condition inspection report for the move-in completed by both parties on September 1, 2016

- A copy of an incomplete condition inspection report for the move-out on August 20, 2017 signed by the landlord

- A copy of the tenants forwarding address in writing (typed) for a PO Box

- A CD with 82 photographs provided by the landlord for the condition of the rental unit at the end of tenancy

A video file showing the landlord's turning off the water and the water overflowing the sink

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the evidence provided by both parties and find on a balance of probabilities that I prefer the evidence of the landlords over that of tenants. Although the tenants have disputed the claims of the landlords, the tenants have provided both conflicting and contradictory evidence. The tenants provided affirmed testimony that there was only 1 hole in 1 wall, but later confirmed that they had caused 2 holes in the walls. The tenants also provided confusing testimony that they were objecting to the submission of the landlord's receipts/invoices because they pre-dated the end of the tenancy. The tenants stated that they had vacated the rental unit on August 17, 2017 and would later return to clean the premises on August 18, 2017. The receipts/invoices provided by the landlords begin August 18, 2017. In any event, the landlord has provided a completed condition inspection report for the move-in dated September 1, 2016 for comparison against the 82 photographs and the 1 video of the water overflowing the sink. This is supported by the landlords' submitted receipts/invoices. As such, I find that the landlords have provided sufficient evidence of their claim of \$921.18. I note that although the landlords failed to provide any record keeping of their hours of work in repairing, cleaning and renovating the rental premises, this is supported by the contents of the photographs showing the amount work required for cleaning and repairs.

The landlords having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlords to retain the \$365.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlords are granted a monetary order for \$656.18.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced 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: March 16, 2018

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Residential Tenancy Branch