



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, FF (Tenants' Application)  
   MNDC, MNSD, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed on September 9, 2017, the Tenants sought return of the security deposit paid and recovery of the filing fee. In the Landlord's Application for Dispute Resolution, filed on October 26, 2017, the Landlord sought monetary compensation from the Tenants for damage to the rental unit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on April 10, 2018. 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 *Residential Tenancy Branch 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

At the outset of the hearing the parties confirmed the spelling of the Landlord's name as well as the spelling of the address of the rental unit; pursuant to section 64(3)(c) of the *Residential Tenancy Act*, and Rule 4.2 of the *Residential tenancy Branch Rules of Procedure*, I amend the application to correctly name the Landlord and identify the address of the rental unit.

### Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Is the Landlord entitled to monetary compensation from the Tenants?
3. Should either party recover the filing fee?

### Background and Evidence

The Tenant M.S. testified as follows. He stated that the tenancy began May 1, 2017. Monthly rent was payable in the amount of \$1,300.00. The Tenants paid a \$650.00 security deposit on May 1, 2017.

M.S. stated that the tenancy ended August 31, 2017.

The Tenants confirmed that the Landlord completed a move in and move out condition inspection report.

The Tenants also confirmed they did not provide the Landlord with their forwarding address until making their Application for Dispute Resolution.

The Landlord filed for dispute resolution on October 26, 2017. She also submitted a Monetary Orders worksheet wherein she confirmed that she sought compensation in the amount of \$79.95 for materials related to repairing the sink, as well as \$525.00 for the cost to repair the sink, repair drywall and the exterior and the bi-fold doors. In support the Landlord submitted a receipt from a popular home renovation store, and an invoice from a handyman.

When I asked the Landlord to explain what was wrong with the sink, she simply responded that it was "broken".

The Tenants replied to the Landlord's submissions as follows. The Tenants stated that the marks on the wall were there when the tenancy began. The Tenants also submitted in evidence photos of the rental unit taken on the day they moved in which showed damage to the wall and floors.

M.S. stated that they did not break the sink. He stated, however that when he went to use the sink it only put out hot water. He stated that he asked the Landlord to have it fixed multiple times and she failed to attend to the repair. He confirmed that they did not make any written request for the repair of the sink.

In reply the Landlord stated that the Tenants never talked to her about the sink during the tenancy.

### Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I will first deal with the Landlord's claim for damages and retention of the Tenants' security deposit.

In a claim for damages the party making the claim bears the burden of proving their claim on a balance of probabilities. In this case, the Landlord bears the burden of proving her claim.

To prove her loss and to have the Tenants pay for the loss the Landlord must prove the following 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.

If the Landlord cannot prove all of the four elements, the burden of proof has not been met and the claim fails.

The Landlord submits that she is entitled to \$79.95 for materials related to repairing the sink and \$525.00 for the handyman services required to repair the rental unit at the end of the tenancy.

The Landlord gave vague evidence as to the issue with the sink, simply alleging the Tenants “broke it”. I am unable, based on the evidence before me to find that the Tenants damaged the sink and I therefore deny her claim for related compensation.

This was a short term tenancy of only four months. While the Landlord submitted a copy of a condition inspection report, this report was not completed properly in that it is not possible to determine which notations relate to the beginning of the tenancy and which relate to the end as the Landlord filled out both on the move in side. As such, I am unable to give this report the evidentiary value normally afforded to reports pursuant to section 21 of the *Residential Tenancy Regulation*.

The Tenants submitted photos taken at the start of the tenancy which show the condition of the rental unit as having damage to the interior walls, the bi-fold doors as well as to a pipe outside. I prefer this evidence over the Landlord’s inspection report. Notably, the Landlord did not dispute these photos and as such, I accept them as evidence of the condition of the rental when the tenancy began.

The invoice submitted by the Landlord from the handyman relates to repairs to the sink, the drywall, the exterior and the bi-fold doors. I find, based on the evidence before me, that these

deficiencies existed at the start of the tenancy and I therefore deny the Landlord's claim for compensation from the Tenants.

As I have dismissed the Landlord's claim, I find the Tenants are entitled to return of their full deposit in the amount of \$650.00. Having been substantially successful they are also entitled to recovery of the \$100.00 filing fee for a total award of \$750.00.

### Conclusion

The Landlord's claim for compensation from the Tenants is dismissed.

The Tenants are entitled to a Monetary Order in the amount of **\$750.00** for return of their security deposit and recovery of the filing fee. The Order must be served on the Landlord 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: April 20, 2018

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Residential Tenancy Branch