



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 18, 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 retain all or part of the security deposit and/or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenants also attended the hearing. All parties provided a solemn affirmation at the beginning of the hearing.

At the beginning of the hearing, the parties confirmed service and receipt of the Application package and documentary evidence to be relied upon by the parties by registered mail. No further issues were raised with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served 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 and to which I was referred. 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 retain all or part of the security deposit and/or pet damage deposit?
4. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on May 15, 2017, and ended when the Tenants vacated the rental unit on August 31, 2017. During the tenancy, rent was due in the amount of \$2,200.00 per month. The Tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00, which the Landlord holds. The Landlord confirmed the property was sold “as-is” soon after the tenancy ended, with a completion date of October 1, 2017.

The Landlord’s claim was summarized on a Monetary Order Worksheet, dated September 18, 2018. First, the Landlord claimed \$6,334.25 with respect to a monetary order issued by an arbitrator on August 29, 2017. It was explained to the Landlord that he may take steps to enforce the monetary order but that I could not make any changes to that order, which he accepted. The related files have been referenced above for convenience.

Second, the Landlord claimed \$800.00 for curtains, curtain rods, and a small venetian blind that he testified were removed by the Tenants. The Landlord referred me to black and white photographic images in support. However, he conceded did not replace these items because the house was sold soon after the Tenants vacated.

In reply, the Tenants acknowledged that a badly damaged Venetian blind was thrown away, but that the curtains and rods were left in the rental unit. The Tenants testified further that the Landlord did not complete a condition inspection on move-in or move-out.

Third, the Landlord claimed \$450.00 for his time to clean the carpets, and a fridge and freezer, at the end of the tenancy. The Landlord referred to black and white photographic images in support.

In reply, the Tenants testified the fridge and freezer were piled with garbage when they moved in. Further, the Tenants testified that the carpets were professionally cleaned when they moved into the rental unit and when they moved out. Photographic images and copies of receipts for carpet cleaning were submitted in support. The Tenants again testified that move-in and move-out condition inspections were not completed.

Fourth, the Landlord claimed \$600.00 to repair holes in the ceiling, walls and trim. He testified the walls were repaired prior to the beginning of the tenancy, but that he did not do any repairs at the end of the tenancy.

In reply, the Tenants again confirmed the Landlord did not complete a move-in or move-out condition inspection and advised the rental unit was in terrible condition when they moved in.

Fifth, the Landlord claimed \$300.00 for the windshield. He referred to a photograph of a fly trap left in the car as evidence of the Tenants' "calling card" because the same fly trap was depicted in a photographic image of the Tenants' kitchen.

In reply, the Tenants denied any knowledge of the cause of the Landlord's broken windshield, noting the car had been parked at the residence for a number of months. The Tenants expressed uncertainty with respect to my authority to hear this aspect of the Landlord's claim.

Sixth, the Landlord claimed \$150.00 for graffiti he submitted was spray-painted on the inside of the garage door. He testified the graffiti stated he was a "slum lord", although the wording was not clear on the photographic image submitted as it had been sprayed over.

In reply, the Tenants denied spray-painting the interior of the garage door.

Seventh, the Landlord claimed \$200.00 for vandalism to the side gate. He testified that the Tenants used a circular saw to cut off the top of the gate. The Landlord submitted photographic evidence in support.

In reply, the Tenants acknowledged they cut off the top of the gate because they could not otherwise access the latch to open the gate.

Eighth, the Landlord claimed \$150.00 for three holes drilled into a wall in the rental unit. The Landlord suggested he does not know why the holes were drilled but submitted it could have been to encourage rats in the rental property. A photographic image of the holes was submitted into evidence.

In reply, the Tenants denied drilling holes in the walls.

Ninth, the Landlord claimed \$575.00 for a stainless steel dishwasher he stated was stolen by the Tenants. He testified the dishwasher from the lower unit was moved to the upper unit occupied by the Tenants, and that the Tenants stole the stainless dishwasher from the upper unit.

In reply, the Tenants denied stealing the dishwasher, noting they moved into a hotel with their children after vacating the rental property and would have had nowhere to keep it.

Tenth, the Landlord claimed \$40.00 to replace a furnace duct cover, which he suggested was removed by the Tenants.

In reply, the Tenants denied they took the furnace duct cover.

Finally, the Landlord also sought to recover the \$100.00 filing fee paid to make the Application.

### Analysis

Based on the unchallenged and 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.

After careful consideration of the evidence submitted by the parties, I find there is insufficient evidence before me to conclude the Tenants are responsible for the losses claimed, except where otherwise admitted. Even if the Tenants had been found to be responsible for the losses claimed, I find further that there is insufficient evidence of the value of the alleged losses. Finally, the Landlord testified he sold the rental property soon after the tenancy ended, and confirmed that many of the expenses claimed were estimates only.

The Tenants did, however, acknowledge disposing of a small Venetian blind and cutting off the top of the side gate to allow easier access to the rear of the property. Policy Guideline #16 indicates I may grant “nominal damages” in cases where no significant loss has been proven but there has been an infraction of a legal right. Accordingly, I grant the Landlord nominal damages in the amount of \$250.00 for the disposal of the Venetian blind and the damage done to the side gate. In addition, I grant the Landlord \$100.00 in recovery of the filing fee paid to make the Application. Accordingly, I find the Landlord is entitled to a monetary award in the amount of \$350.00, which may be retained from the security and pet damage deposits held.

Policy Guideline #17 stipulates that, upon hearing a landlord's application to retain all or part of the security or pet damage deposits, an arbitrator will order the return of the balance of the deposit to the tenant, whether or not the tenant has applied for their return. Accordingly, I order the Landlord to return the balance of the security and pet damage deposits to the Tenants forthwith. Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,850.00.

### Conclusion

The Tenants are granted a monetary order in the amount of \$1,850.00. The 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: April 17, 2018

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Residential Tenancy Branch