



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC-L, FFL, MND-L

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution filed on November 17, 2017, wherein the Landlord requested monetary compensation from the Tenant, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on June 26, 2018 at 1:00 p.m. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:31 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

As the Tenants did not call in, service of the Landlords' hearing package was considered. The Landlord, T.C., testified that they served the Tenant, J.R. with the Notice of Hearing and the Application on November 21, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service

provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant J.R. was duly served as of November 26, 2017 and I proceeded with the hearing in their absence.

As the Landlords failed to serve the Tenant, M.R., I find that she was not given notice of these proceedings. Accordingly I find that any Decision or Order made is against the Tenant J.R. only.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' 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.

#### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords recover the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began May 1, 2016. Monthly rent was payable in the amount of \$1,000.00. The Tenants paid a security deposit in the amount of \$500.00. The Landlord testified that clause 4 of the tenancy agreement provided that the Tenants would pay 30% of the gas and electricity utility.

The tenancy ended on October 31, 2017. The Landlords testified that they received the Tenant's forwarding address on November 16, 2017.

In the within action the Landlords sought compensation for the following:

Cost to replace a broken light fixture	\$50.00
Painting	\$550.00
Professional carpet cleaning	\$84.00
Fortis gas (September 28 to October 26)	\$24.49
Fortis gas (October 27 to October 31)	\$8.57

Electrical charge (September 2 to October 31)	\$32.97
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$850.03</b>

The Landlord submitted in evidence photos of the rental unit, invoices for the amounts claimed as well as a condition inspection report which confirmed the condition of the rental unit at the end of the tenancy.

### Analysis

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

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The undisputed evidence before me confirms that the Tenants did not clean or repair the rental unit as required. I am persuaded by the photos submitted by the Landlords which confirms their testimony regarding the condition of the rental unit at the end of the tenancy. I am also persuaded by the invoices submitted that the Landlords incurred the amounts claimed to clean and repair the rental unit. I therefore award the Landlords the amounts claimed.

I also find that the Tenants did not pay the utility accounts as mandated by their tenancy agreement. The Landlords are therefore entitled to the amounts claimed for these accounts.

As the Landlords have been substantially successful, I also award them recover of the filing fee.

### Conclusion

Pursuant to sections 67 and 72, I find that the Landlords are entitled to the sum of **\$850.03** for the following claimed expenses:

Cost to replace a broken light fixture	\$50.00
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Painting	\$550.00
Professional carpet cleaning	\$84.00
Fortis gas (September 28 to October 26)	\$24.49
Fortis gas (October 27 to October 31)	\$8.57
Electrical charge (September 2 to October 31)	\$32.97
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$850.03</b>

I grant the Landlords authority, pursuant to sections 38 and 72, to retain the \$500.00 security deposit towards the amounts claimed and I grant them a Monetary Order for the balance due of **\$350.03**. The Landlords must serve the Monetary Order on the Tenant and may, if necessary, file and enforce it 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: June 28, 2018

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Residential Tenancy Branch