



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks compensation under section 67 of the Act for strata move out costs, a lost key fob, NSF cheque charges, and the cost to clean the rental unit. In addition, the landlord seeks compensation for recovery of the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened, and the landlord attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord testified that she served the Notice of Dispute Resolution Proceeding package (the "package") on the tenant by way of Canada Post registered mail on, or the day after, June 28, 2018. I find that the landlord has sufficiently served the tenant pursuant to section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Issues to be Decided

1. Is the landlord entitled to \$362.00 for the various costs and fees claimed?
2. Is the landlord entitled to \$100.00 for the cost of the filing fee?

### Background and Evidence

The landlord testified that the tenancy commenced September 1, 2017. Monthly rent was \$850.00, and the tenant paid a security deposit of \$425.00. The tenant did not have to pay a pet damage deposit. Submitted into evidence was a copy of the written tenancy agreement.

A Condition Inspection Report was completed upon the start and at the end of the tenancy; a copy of the report was submitted into evidence. The tenant did not participate in the move-out inspection.

In her application, and as testified, the landlord seeks \$100.00 for strata moving out fees, \$112.00 for the cost of a replacement key fob, \$75.00 for three \$25.00 NSF fees, and \$75.00 for cleaning costs related to the rental unit. The total claimed is \$362.00.

In support of her claim, the landlord submitted into evidence several photographs of the rental unit, a Monetary Order Worksheet, a cleaning receipt, a caretaker report, a bank statement reflecting the NSF charges, a moving out fees receipt, and the lost fob cost document.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In determining whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?

2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

In this case, I find that the landlord has established that the tenant failed to comply with the Act and with the tenancy agreement. Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that tenant did not comply with this section of the Act. The tenancy agreement's addendum referred to the costs of NSF cheques and to the cost of a replacement key fob. Finally, the landlord bore the cost of the tenant vacating the unit as she did, thereby incurring strata fees.

Second, I find that but for the tenant's non-compliance with the Act and the tenancy agreement, the landlord would not have incurred the claimed losses.

Third, the landlord has, through her testimony (which is consistent with her documentary evidence), and her documentary evidence, proven the amount of her losses.

Finally, there is no evidence before me to suggest that the landlord did anything other than act reasonably in minimizing her losses. Indeed, for some of these costs, such as the replacement key fob, there is nothing that the landlord could have done to minimize the losses in any event.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for compensation in the amount of \$362.00.

As the landlord is successful in her claim I grant her an additional monetary award of \$100.00 for recovery of the filing fee.

Given the above, I grant the landlord a total monetary award of \$462.00. I order that the landlord may retain the entire security deposit in the amount of \$425.00 in partial satisfaction of the award.

Conclusion

I grant the landlord a monetary order in the amount of \$37.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 22, 2018

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Residential Tenancy Branch