



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MND MNDC FF  
Tenant: MNDC MNSD FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on October 3, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 12, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order granting the return of all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Landlord's Application package and documentary evidence were served on the Tenant by registered mail. The Tenant acknowledged receipt. The Tenant testified the Tenant's Application package and documentary evidence were served on the Landlord in person. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above 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.

#### Preliminary and Procedural Matters

During the hearing, the parties agreed C.K. should not have been named as a party in these proceedings. Accordingly, pursuant to section 64 of the *Act*, I amend the Tenant's Application to remove C.K. as a party.

#### Issues

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Tenant entitled to an order granting the return of all or part of the security deposit or pet damage deposit?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord testified 1,800-square-foot rental unit includes 4 bedrooms and 2 bathrooms, which was not disputed by the Tenant.

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a month-to-month tenancy began on November 1, 2016. The parties agreed the tenancy ended on July 31, 2018, after the Tenant provided the Landlord with a written notice to end tenancy dated June 27, 2018. A copy of the Tenant's notice was submitted into evidence. During the tenancy, rent in the amount of \$2,450.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,225.00, which the Landlord holds.

### The Landlord's Claim

The Landlord's claim was set out in a Monetary Order Worksheet, dated October 3, 2018. First, the Landlord claimed \$722.50 for 4 individuals to clean the rental unit. A total of 34 hour of cleaning time was claimed. Receipts and statements in support of the amounts were provided, and the Landlord confirmed the amounts claimed were paid to the cleaners. The statements also described what cleaning was required.

In further support, the Landlord submitted multiple photographs depicting the condition of the rental unit at the beginning of the tenancy. The photographs indicate the rental unit was clean at the beginning of the tenancy. In contrast, the Landlord also submitted numerous photographs of the rental unit taken at the end of the tenancy. The detailed images included photographs of windows, vents, furniture, sinks, the bathtub and shower, the fireplace hearth, floors, drawers, stove, microwave, and walls. The photographs suggest the rental unit was not thoroughly cleaned at the end of the tenancy.

In reply, the Tenant testified that the Landlord did not comply with arrangements to complete a move-out condition inspection. Although the parties agreed the Landlord left the rental unit during the move-out condition inspection, they disagreed about whether or not the Landlord returned to complete the inspection. In any event, the Tenant testified that the carpets were steam cleaned and that surfaces were washed throughout the rental unit. In support, the Tenant submitted a number of photographs taken before and after the incomplete move-out condition inspection. The photographs appear to depict the rental unit in a reasonably clean state.

Second, the Landlord claimed \$106.40 for drywall repairs in the rental unit. The Landlord testified that a painting from the hallway was moved into the master bedroom to cover patches of plaster that were torn. The parties submitted a copy of the Condition Inspection Report. The move-in condition inspection revealed "picture holes...scratches...[and] tape marks" but did not

indicate torn patches of plaster. The Landlord also submitted a photograph of the damaged wall and a receipt, dated August 3, 2018, confirming payment of the amount claimed.

The Landlord claimed \$70.84 for registered mail charges and photographs in preparation for the hearing. The Landlord was advised during the hearing that these costs are not recoverable and that this aspect of the Landlord's Application would not be considered further.

Finally, the Landlord claimed \$100.00 for the filing fee paid to make the Landlord's Application.

#### The Tenant's Claim

The Tenant's claim was set out in a Monetary Order Worksheet, dated August 28, 2018. First, the Tenant claimed \$1,225.00 for recovery of the security deposit. The parties agreed the Tenant first provided the Landlord with a forwarding address in writing by registered mail. However, within the 15 day period, the Tenant advised the Landlord not to use the forwarding address provided. The parties agreed that a new forwarding address in writing was sent to the Landlord by registered mail and was received by the Landlord of September 21, 2018. The Tenant testified the Landlord has not yet returned the security deposit to her, which was not disputed by the Landlord.

Second, the Tenant claimed \$2,450.00 as compensation. She testified the Landlord suggested that her son was going to move in to the rental unit. Although the Tenant communicated her desire to stay in the rental unit, the Landlord did not respond definitively. Ultimately, and apparently out of frustration, the Tenant provided the Landlord with notice of her intention to vacate the rental unit on July 31, 2018.

The parties agreed the Landlord did not issue a notice to end tenancy. However, the Tenant submitted that what the Landlord might or ought to have done was a relevant consideration. Specifically, the Tenant suggested the Landlord ought to have issued a notice to end tenancy for landlord's use of property if she intended for her son to live in the rental unit, which would have given rise to an entitlement to compensation equal to one month's rent under the *Act*.

In reply, the Landlord agreed that the tenancy reverted to a month-to-month tenancy at the end of the fixed term, and asserted that she did not issue a notice to end tenancy.

Third, the Tenant claimed \$45.90 for registered mail and other administrative costs associated with preparing for the hearing. The Tenant was advised during the hearing that these costs are not recoverable and that this aspect of the Tenant's Application would not be considered further.

Finally, the Tenant claimed \$100.00 for the filing fee paid to make the Tenant's Application.

### Analysis

Based on all of the above, the evidence and testimony, 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 each party 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 Tenant. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that each party did what was reasonable to minimize the damage or losses that were incurred.

### The Landlord's Claim

With respect to the Landlord's claim for \$722.50 to clean the rental unit, I find I am satisfied that cleaning was required at the end of the tenancy. I prefer the photographs submitted by the Landlord as they depict the rental unit in greater detail. The Landlord also provided documentary confirmation of the amount paid for cleaning, which provided a description of the cleaning tasks performed. Accordingly, I grant the Landlord a monetary award of \$722.50 for cleaning services required in the rental unit.

With respect to the Landlord's claim for \$106.40 for drywall repairs in the rental unit, I find the Landlord is entitled to recover the amount claimed. The claim was supported by a move-in condition inspection, photographs, and a receipt for the wall repairs.

As noted above, the Landlord's request for reimbursement of costs associated with preparing for the hearing are dismissed.

The Landlord is granted a total monetary award of \$828.90.

#### The Tenant's Claim

With respect to the Tenant's claim for \$1,225.00 for recovery of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. In this case, I find the Tenant provided the Landlord with her forwarding address in writing on September 21, 2018. Therefore the Landlord had until October 6, 2018, to repay the security deposit or make a claim against it. The Landlord made a claim against the security deposit in time on October 3, 2018. Therefore, the security deposit held by the Landlord will be set off against the parties' awards.

With respect to the Tenant's claim for \$2,450.00 as compensation, I find the tenancy ended because the Tenant gave notice of her intention to vacate the rental unit on July 31, 2018, which she did. The Tenant was under no obligation to do so. Importantly, I find the Landlord did not issue a notice to end tenancy for landlord's use of property which would entitle the Tenant to compensation. The Landlord's intentions, or what she would or should have done, are not relevant considerations. This aspect of the Tenant's Application is dismissed.

As noted above, the Tenant's request for reimbursement of costs associated with preparing for the hearing are dismissed.

#### Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award of \$828.90. The Tenant has demonstrated an entitlement to the return of the security deposit, less any amount to which the Landlord is entitled.

Section 72 of the *Act* empowers me to grant recovery of a filing fee to a successful party. In this case, both parties have had some success. As a result, I decline to grant either party recovery of the filing fee.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$396.10, which has been calculated as follows:

*Security deposit – Landlord’s monetary award = amount of monetary order*

$$\$1,225.00 - \$828.90 = \$396.10$$

### Conclusion

The Tenant is granted a monetary order in the amount of \$396.10. The monetary 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: December 5, 2018

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Residential Tenancy Branch