



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VICTORIA NATIVE FRIENDSHIP CENTRE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on September 10, 2018 wherein the Landlord sought monetary compensation from the Tenants, authority to retain the Tenants' security deposit.

Only the Landlord's representative, M.E., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's 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 1:52 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 M.E. and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. M.E. testified that they served the Tenants with the Notice of Hearing and the Application on September 18, 2018 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 and reads in part as follows:

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 the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of September 23, 2018 and I proceeded with the hearing in their absence.

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 Landlord's 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 Matters

M.E. confirmed her email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?

### Background and Evidence

The Landlord provided a copy of the residential tenancy agreement in evidence which confirmed that this tenancy began August 1, 2017. Monthly rent was payable in the amount of \$800.00 and the Tenants paid a security deposit of \$400.00.

M.E. testified that on August 30, 2018 the Tenants sent an email to the Landlord confirming that they would not be participating in the move out inspection. At that time the Tenants provided their forwarding address in writing. A copy of that email was provided in evidence for my consideration.

M.E. testified that the Tenants vacated the rental unit but left garbage and furniture which had to be removed. The Tenants also failed to return their key to the rental unit.

The Landlord sought the sum of \$400.00 representing the cost of removing garbage left by the Tenants. The Landlord provided in evidence a copy of the invoice for the garbage removal service.

## Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: [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.

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.

I accept the Landlord's undisputed evidence that the Tenants failed to clean the rental unit as required and left items at the rental unit which the Landlord was forced to pay to have removed. I therefore award the Landlord the **\$400.00** claimed for disposal costs.

I also find that the Tenants refused to participate in the move out condition inspection report as required and as such extinguished their right to claim return of their deposit pursuant to section 36 of the *Act*.

### Conclusion

The Landlord is entitled to the sum of \$400.00 for the cost to remove the Tenants' garbage. Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenants' security deposit of \$400.00 towards this award.

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: January 16, 2019

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Residential Tenancy Branch