



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 4, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- a monetary order for money owed or compensation for damage or loss;
- an order authorizing the Landlord to retain the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

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

The Landlord testified the Application package was served on the Tenants by registered mail. The Tenants acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The Tenants uploaded documentary evidence to the Residential Tenancy Branch via the Service Portal on December 27, 2018, almost 4 months after the Application was made and less than 2 weeks before the hearing was scheduled. The Tenants testified this documentary evidence was served on the Landlord by Express Post on the same date. However, the Tenants did not submit a receipt or tracking information in support of service, and the Landlord denied receipt. I find there is insufficient evidence before me to find that the Tenants' documentary evidence was served in accordance with the *Act* and the Rules of Procedure. Accordingly, these documents have not been considered further in this Decision.

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 unpaid rent?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain the security deposit and/or the pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on October 24, 2014. The Tenants rented the entire property. The Tenants resided in the upper portion of the property and rented the lower portion to sub-tenants. On May 31, 2018, the Tenants provided the Landlord with written notification of their intention to vacate the rental property on June 30, 2018. However, the Tenants vacated the upper portion of the rental property on June 24, 2018, leaving the sub-tenants in place. The Tenants paid rent in the amount of \$2,900.00 per month, which was due on or before the first day of each month. Rent did not include BC Hydro. The Tenants paid a security deposit of \$1,450.00, which the Landlord holds.

The Landlord's monetary claim was set out in a Monetary Order Worksheet, dated August 28, 2018. First, the Landlord claimed \$100.00 for an outstanding BC Hydro bill, which was not included in rent paid by the Tenants. During the hearing, the Landlord testified that the actual amount was \$101.94. The Landlord was unable to refer me to a BC Hydro invoice in support of the amount claimed.

In reply, the Tenants advised they did not feel they should be responsible for the amount claimed. The Tenants testified the sub-tenants indicated during a previous dispute resolution proceeding (not involving the Landlord) that they entered into a new tenancy agreement with the Landlord on July 10, 2018. The Landlord denied this claim and testified the new tenancy agreement was dated July 28, 2018. Although effective August 1, 2018, the Landlord did not require any pro-rated rent payments.

Second, the Landlord claimed \$2,900.00 for rent that was due on July 1, 2018. The Landlord acknowledged the Tenants provided written notice as described above and vacated the upper portion of the rental property on June 24, 2018. However, she asserted that she was not provided with vacant possession of the entire rental property at that time because the sub-tenants remained after June 30, 2018. As of July 1, 2018, the Landlord had no agreement with the sub-tenants.

In reply, and based on the dispute resolution proceedings referred to above, the Tenants again asserted that the Landlord and the sub-tenants entered into a new rental agreement on July 10, 2018, which was denied by the Landlord. Neither party submitted a copy of the tenancy agreement between the Landlord and the sub-tenants into evidence.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested to apply the security deposit held in partial satisfaction of the claim.

### Analysis

Based on the 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.

With respect to the Landlord's claim for \$100.00 for a BC Hydro expense, I find there is insufficient evidence before me to establish the value of the alleged loss. The Landlord was unable to refer me to documentary evidence in support of the amount claimed. Further, the evidence is contradictory in that the Landlord asserts an amount is due and the Tenants deny an obligation to pay. This aspect of the Application is dismissed.

With respect to the Landlord's claim for \$2,900.00 for unpaid rent, section 26(1) of the *Act* confirms:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

[Reproduced as written.]

In this case, it was not disputed that the Tenants rented the entire property and, with the consent of the Landlord, rented the lower portion to sub-tenants. Although the Tenants provided notice of their intention to end the tenancy on June 30, 2018 (and actually moved out on June 24, 2018), their sub-tenants remained in their rental unit after July 1, 2018, on which date rent became due. As between the parties, the obligation was on the Tenants to provide the Landlord with vacant possession of the rental property by June 30, 2018, in accordance with their notice dated May 31, 2018. They did not. Accordingly, I find the Landlord is entitled to monetary award of \$2,900.00 for unpaid rent.

Having been successful, I grant the Landlord a monetary award of \$100.00 in recovery of the filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,550.00, which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Unpaid rent:	\$2,900.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,450.00)
<b>TOTAL:</b>	<b>\$1,550.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$1,550.00. 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: January 8, 2019

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Residential Tenancy Branch