



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL-S MNDL-S MNRL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord was represented by KC and KC. The landlord was given a full opportunity to be heard, to present sworn testimony, to call witnesses, and to make submissions. The tenants did not attend the hearing. I kept the teleconference line open during the duration of the hearing, which was approximately 60 minutes, to allow the tenants the opportunity to call. The teleconference system indicated that only the landlord and I had called into the hearing. I confirmed that the correct call-in number and participant code for the tenants had been provided.

The landlord testified that the tenants provided a forwarding address by text message and the landlord served the notice of dispute resolution package on each of the tenants by registered mail at the tenants' stated forwarding address on November 28, 2018. The landlord provided the registered mail tracking numbers for these mailings. Accordingly, I find that the tenants were served with the notice of dispute resolution package on December 3, 2018, in accordance with section 89 of the *Act*.

The landlord testified that they sent the landlord's evidence package to each of the tenants on January 7, 2019 by registered mail. The landlords provided the registered mail tracking numbers. Pursuant to section 90, the evidence package is deemed to have been received by the tenants five days later, being January 12, 2019. Residential

Tenancy Branch Rule 3.14 requires that evidence must be received by the respondent 14 days before the hearing. In this matter the evidence is deemed to have been served only ten days before the hearing. However, although the service of the evidence was less than 14 days, I do not find that the tenants have been prejudiced since they have not appeared at the hearing. Accordingly, I will admit the landlords evidence even though it was served late.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit pursuant to section 67?

Is the landlord entitled to recover their filing fee for this application from the tenant pursuant to section 72?

#### Background and Evidence

The landlord testified that the parties entered into a tenancy agreement commencing on March 1, 2018 with a fixed term ending on February 28, 2019. The tenancy agreement stated a monthly rent of \$1,625.00 payable on the first day of each month. The tenancy agreement provided for a security deposit of \$812.50. A copy of the tenancy agreement was submitted as evidence.

The tenancy agreement had a liquidated damages clause which stated that the tenants were liable to pay \$625.00 as liquidated damages for the cost of re-renting the rental unit if the tenants left early. The liquidated damages clause stated that this provision was not a penalty and that this provision did not preclude any claims for future rental losses.

The tenancy agreement also had a provision that the tenants were responsible for 50% of the utilities. The landlord testified that the rental unit was an upstairs/downstairs duplex and the utility bills were split equally between the tenants' rental unit and the neighbouring rental unit upstairs.

The landlord testified that the tenants did not pay the October 2018 rent and they started moving out of the property early October. The landlord testified that they posted a 10 Day Notice to end Tenancy For Unpaid Rent on October 15, 2018. The landlord testified that the tenants abandoned the rental unit by the end of October 2018.

The landlord testified that they needed to have a locksmith re-key the locks because the tenants did not turn their keys. The landlord submitted an invoice dated November 6, 2018 for \$112.35 for locksmith services.

The landlord testified that the tenants left the property in a dirty condition. The landlord submitted a cleaning bill for \$220.00 to clean the rental unit. The cleaning bill stated that 5.5 hours of cleaning services were rendered at \$40.00 per hour on November 16, 2018.

The landlord testified that the rental unit needed substantial repairs to fix the damage caused by the tenants. The landlord submitted numerous photographs of the rental unit. In addition, the landlord provided an invoice which stated the following services were rendered:

- Patch, sand and paint
- Remove broken bathroom door
- Purchase new bathroom door and millwork to size
- Paint door and install hardware and install new door
- Replace smoke detector
- Clean carpet (2 rooms, hallway and stairs)
- Replace light bulbs

The maintenance invoice stated that 22.5 hours of work was performed at \$45.00 per hour. The invoice also stated that \$232.47 in materials were used. The invoice did not itemize the time or materials charged for each of the stated services.

The landlord testified that the tenants also had unpaid utility bills from the tenancy. The landlord presented multiple utility as evidence. However, most of the utility bills covered the period of time after the tenancy had ended. Accordingly, the landlord withdrew their request for repayment of utility bills except for one invoice dated October 18, 2018 for \$379.49 covering the time period of August 18, 2018 to October 18, 2018. The landlord testified that the tenants' owed one half of this amount, being \$188.24.

The landlord testified that they have tried to rent the property but they have been unable to do so. The landlord testified that they listed the property on numerous property and classified listing services but there has been very little interest in the property. The landlord testified that they have only received one inquiry about renting the property. The landlord testified that there is currently a high vacancy rate in the Kelowna area

because of a glut of new home construction. However, the landlord did not provide any documents evidencing their efforts to market this rental property.

The landlord testified that they have not receive any funds from the tenants since October 2018 other than a payment of \$200.00 which the tenants provided as partial payment of their debt to the landlord.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

Each of the landlord's claims are addressed:

### *Cleaning*

The photographs submitted by the landlord show that the property did need to be cleaned after the tenants vacated the property. I find that 5.5 hours of cleaning is reasonable. However, I find the rate of \$40.00 per hour to be excessive for cleaning services. I find that a reasonable rate for cleaning services is \$20.00 per hour. Accordingly, I grant the landlord the amount of \$110.00 (5.5 hours times \$20.00 per hour) for cleaning services.

### *Locksmith*

I find that the tenants are responsible for locksmith services to re-key the rental unit since they failed to turn in their keys at the end of their tenancy. The landlord's claim of \$112.35 for locksmith services is reasonable and I shall allow this claim.

### *Repairs*

I find that the landlord's repair request is excessive. The invoice does not itemize the time spent on each of the services rendered. The contractor simply aggregated the services together and claimed 22.5 hours of service. However, the photographs provided by the landlord do not show the need for this much work. The only substantial service stated on the invoice was painting and the replacement of a door.

The landlord testified that almost the entire rental unit needed to be repainted except for one room. The photographs provided did show some discolorations on the walls. However, there is not sufficient evidence to establish to support the landlord's claim that virtually the entire rental unit needed to be repainted.

I find that landlord's repair request is excessive and I only grant the landlord ten hours of repair services. I accept the contractor's rate of \$45.00 per hour. Accordingly, I award the landlord \$450.00 for repair labour costs. In addition, I grant the landlord's claim for \$232.47 for repair materials. The total amount I shall allow for repair costs is therefore \$682.47.

### *Liquidated Damages*

The tenancy agreement provided for liquidated damages of \$625.00 for early termination of the tenancy.

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated

damages, an arbitrator will consider the circumstances at the time the contract was entered into.

In this matter, I find that \$625.00 is a reasonable pre-estimate of the cost of re-renting the property and I do not find that this provision is a penalty. Accordingly, I find that the liquidated damages clause is valid.

I find that the tenants have ended the tenancy early. Accordingly, I award the landlord \$625.00 in liquidated damages.

### *Loss of Rent*

The landlord has claimed unpaid rent from October 2018 and loss of rent from the tenants' early termination of the tenancy agreement.

I find that the tenants occupied the rental unit in October 2018 and they did not pay the October 2018 rent. Accordingly, I find that the tenants are liable for \$1,625.00 for the October 2018 rent.

The landlord also claims that the tenants owe the landlord rent payments from November 2018 through the duration of the fixed term tenancy, being February 2019.

Although the parties do have a fixed term tenancy extending to February 2019, the landlord has an obligation to mitigate its losses by attempting to rent the property to another tenant. Residential Tenancy Policy Guideline #4 states the following about the duty to mitigate:

Where the landlord or tenant breaches a term of the tenancy agreement or the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an

improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Furthermore, in regards to claims for losses of rental income, Residential Tenancy Policy Guideline #4 states that:

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

In this matter, I am not satisfied that the landlord has provided adequate evidence to establish on a balance of probabilities that they have made reasonable efforts to re-rent the property. The landlord testified that they have posted the listing on multiple listing services. However, the landlord provided no documents to corroborate this effort.

In addition, I am not convinced that the landlord has diligently attempted to get this property re-rented as quickly as possible. The landlord testified that the tenant starting leaving the property at the start of October and had left the property towards the end of October. I note the cleaning invoice indicates that the rental unit was not cleaned until November 16, 2018.

I do not find that the landlord has presented sufficient evidence to satisfy their burden of proof to show that they have attempted to mitigate the loss. Accordingly, I grant the landlord \$1,625.00 for unpaid rent in October 2018 but I deny the landlord's claim for loss of rental income for state the months for clarity.

I find that the landlords are entitled to an award of \$3,154.82 from tenant for damages to the property as summarized below:

<u>Item</u>	<u>Amount</u>
Cleaning	\$110.00
Locksmith	\$112.35
Repairs	\$682.47
Liquidated damages	\$625.00
Unpaid October rent	\$1,625.00
<b>Total</b>	<b>\$3,154.82</b>

#### *Credit*

The landlord acknowledged that tenants have paid the landlord \$200.00 after they left the property. Accordingly, the tenants shall receive a credit of \$200.00 against any amounts owed to the landlord.

#### *Security Deposit*

I find that the landlord holds a security deposit of \$812.50. I find that the amount of the deposit held by the landlord can be deducted from the amount owed to the landlord pursuant or section 72(2)(b) of the *Act*.

#### *Filing fee*

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee.

The net award to landlords is accordingly \$2,242.32 as set forth below:

<u>Item</u>	<u>Amount</u>
Damages Payable to landlord	\$3,154.82
Filing recovered by landlord	\$100.00
Less: deposit held by landlords	(\$812.50)
Less: payment by tenants	(\$200.00)
<b>Net Award to landlord</b>	<b>\$2,242.32</b>

Accordingly, I order the tenant to pay the landlords the sum of \$2,242.32.



Conclusion

I find that the landlord is entitled to a monetary award of \$3,154.82 for damage to the property.

I find that the landlord is entitled to recover \$100.00 as reimbursement of their filing fee.

I find that the deposit of \$812.50 should be deducted from the amount owed to landlord.

I find that a payment of \$200.00 by the tenants should be deducted from the amount owed to landlord.

The net award is the sum of \$2,242.32 payable by the tenant to the landlord.

The landlords are granted a monetary order in the amount of **\$2,242.32**. This order must be served on the tenant. If the tenant does not comply with this order, the landlords may enforce this order in the Small Claims Division of the British Columbia court

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: February 4, 2019

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Residential Tenancy Branch