



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDL-S, FFL  
Tenant: MNDCT, FFT

### 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 November 22, 2018, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage.
- an order to retain the security deposit.
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on February 2, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation.
- an order granting recovery of the filing fee.

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

The Landlord testified that he served his Application and documentary evidence package to the Tenant by Canada Post registered mail on November 24, 2018. The Landlord submitted a copy of the registered mail receipt in support. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

The Tenant testified that she served the Landlord with her Application and documentary evidence package by registered mail on February 2, 2019. The Landlord testified that he did not receive the package from the Tenant and was unaware of the Tenant's Application. The Tenant was unable to provide a Canada Post tracking number in support. The Tenant provided a picture of the envelope she sent to the Landlord in her documentary evidence, which did not indicate that registered mail was used for service.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Sections 12 and 15 of Residential Tenancy Policy Guidelines (the "Policy Guidelines") read in part as follows:

*...Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...*

The Tenant provided no evidence to confirm that these packages were served to the Landlord in accordance with section 89(1), therefore, I dismiss the Tenant's Application with leave to reapply.

The hearing continued based on the Landlord's Application. The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary for damage, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began September 1, 2015. Rent in the amount of \$900.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 which the Landlord currently holds. The Tenancy ended on October 31, 2018.

The Landlord is seeking compensation in the amount of \$900.00 in relation to the some damage that needed repair as well as some cleaning required to the rental unit. The parties agreed that a move out inspection was completed on October 31, 2018. The landlord did not provide a monetary worksheet in preparation for this hearing.

The Landlord is claiming that the Tenant had a pet in the rental unit which caused some damage, as well as there was an odor of smoke, which the Landlord suspects is caused by the Tenant smoking in the rental unit. The Tenant denied that her pet caused any damage to the rental unit. Furthermore, the Tenant indicated that she never smoked inside her rental unit.

The Landlord testified that the stove and exhaust fan in the kitchen were so dirty that they needed replacing. The Landlord testified that the walls were damaged requiring patch work. The Landlord stated that the flooring was also damaged and needed replacement. The Landlord estimated the cost of the entire floor being replaced to be around \$1,200.00. Lastly, the Landlord indicated that the rental unit required further cleaning. The Landlord provided several pictures in his documentary evidence in support.

In response, the Tenant indicated that she had resided in the rental unit for over 3 years and that the Landlord should be accepting of some slight wear and tear. Furthermore, the Tenant stated that the damage noted by the Landlord had been caused by the previous tenants. The Tenant testified that the condition inspection report indicates that at the time of the move in inspection, the wear and tear to the floor throughout the rental unit was noted. The Landlord submitted a copy of the condition inspection report.

The Tenant acknowledged that she could have spent more time cleaning the rental unit and stated that she would agree to the Landlord retaining \$50.00 of her security deposit for two hours of cleaning at the rate of \$25.00 an hour.

The Tenant stated that following the end of her tenancy, she provided the Landlord with her forwarding address in writing by placing it under a rock on the ground at the Landlord's door on November 4, 2018. The Landlord stated that he only received the Tenant's forwarding address after he found a piece of paper on the ground beside his driveway a few weeks after the tenancy ended. The Landlord stated that he submitted his Application shortly after he found the Tenant's forwarding address.

### 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 resulting 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, 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, 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.

In relation to the Landlord's claim for \$900.00 to repair damage and to clean the rental unit, the Landlord testified that he replaced the stove and exhaust fan in the kitchen as they were so dirty he could not clean them. I find that the Landlord provided insufficient evidence to demonstrate that these items needed replacing. Furthermore, the Landlord provided no evidence that the items were in fact replaced nor did the Landlord provide evidence of the cost of replacement. For these reasons, this aspect of the Landlord's claim is dismissed without leave to reapply.

Regarding the flooring, the Landlord testified that the flooring needs complete replacement as there are several areas which appear to be damaged. The Landlord estimated the cost would be approximately \$1,200.00 to replace the flooring. The Landlord submitted several pictures in support. The Tenant denies damaging the floor and testified that at the time of the move in condition inspection report, the floors were noted as having wear and tear. I find that the Landlord has provided insufficient evidence to demonstrate support this claim. I find that the condition inspection report submitted by the Landlord clearly indicated that the floors throughout the rental unit had previous wear and tear at the commencement of the tenancy; therefore, this aspect of the Landlord's claim is dismissed.

The Landlord is seeking compensation related to the repair of walls, and cleaning of the rental unit as a result of the Tenant's pet and smoking in inside. The Tenant denies that

her pet caused any damage to the rental unit and stated she never smoked inside the rental unit. The Tenant agreed that the rental unit required further cleaning. The Landlord did not provide any evidence as to how long it took to clean the rental unit, nor did the Landlord provide confirmation of the cost for cleaning. The Tenant agreed to pay the Landlord \$50.00 for cleaning which represents 2 hours at a rate of \$25.00 per hour.

I find that the Landlord is entitled to the return of the \$50.00 which the Tenant has offered to pay for further cleaning to the rental unit.

The Landlord has applied to retain the Tenant's security deposit to offset a portion of his claim.

Section 38(1) of the *Act* requires a landlord to repay deposits or make 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.

The parties agreed that the tenancy ended on October 31, 2018. The Tenant testified that she served the Landlord with her forwarding address by placing it on the ground under a rock at the Landlord's door. The Landlord testified that he found the Tenant's forwarding address a few weeks after the Tenancy ended on a piece of paper he found beside his driveway.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

I find that the Tenant did not serve the Landlord her forwarding address in accordance with Section 88 of the *Act*. As such, I accept that the Landlord only learned about the Tenant's forwarding address a few weeks after the Tenancy ended after finding a piece of paper beside his driveway. I find that the Landlord submitted his Application within the appropriate timeline outlined in Section 38(1) of the *Act*.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain portion of the security deposit held in satisfaction of the claim

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$150.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Cleaning:	\$50.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	- (\$450.00)
<b>TOTAL:</b>	<b>-\$350.00</b>

I order the Landlord return the remaining portion of the security deposit in the amount of \$350.00 to the Tenant.

Conclusion

The Tenant is granted a monetary order in the amount of \$350.00 for the remaining portion of their security deposit. The order should be served as soon as possible and can be filed 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: March 25, 2019

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Residential Tenancy Branch