



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on December 29, 2018 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 16, 2019 as a teleconference hearing. The Landlords appeared at the scheduled date and time of the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 27 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenants by registered mail on January 6, 2019. The Landlords provided the tracking information in support. Based on the oral and written submissions of the Landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on January 11, 2019, the fifth day after the registered mailing. The Tenants did not submit documentary evidence in response to the Application.

The Landlords 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. Are the Landlords entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified that the tenancy began on February 15, 2017. During the tenancy, the Tenants paid rent in the amount of \$1,800.00 to the Landlords each month. The Tenants paid a security deposit in the amount \$900.00. The Landlords testified that they were ordered to repay the Tenants their security deposit in a previous decision made by the Residential Tenancy Branch. The Landlords testified that the tenancy ended on January 18, 2018.

The Landlords testified that once the Tenants moved out of the rental unit, they notice a strong odor of smoke throughout the rental unit which had not been present prior to the tenancy. The Landlords stated the issue of smoking in the rental unit was discussed with the Tenants during their tenancy; however, based on the smell in the rental unit, the Landlords are under the impression that the Tenants did not abide by the no smoking condition listed on the addendum to the tenancy agreement. The Landlords submitted a copy of the tenancy agreement in support.

The Landlords stated that they completed move out condition inspection report with the Tenants on January 17, 2018. The Landlords submitted a copy of the condition inspection report in support, which indicated that the Tenants agreed that there was an odor of smoke and staining due to smoking cigarettes indoors.

The Landlords stated that they attempted to re-rent the rental unit following the end of the tenancy; however, during each showing, it was noted that the smell of smoke was a deterrent to potentially interested tenants. As a result, the Landlords testified that they

were required to further clean the rental unit to reduce the smell of smoke caused by the Tenants.

The Landlords are claiming \$734.95 in relation to cleaning and repair costs in the rental unit. The Landlords outlined their claim on a monetary worksheet listed below;

The Landlords are claiming \$435.75 in relation to carpet cleaning required throughout the rental unit. The Landlords testified that as a result of the Tenants smoking in the rental unit, the carpet absorbed a lot of the smell. Furthermore, the carpets were left dirty by the Tenants. The Landlords submitted a carpet cleaning receipt in support.

The Landlords are claiming \$157.50 in cleaning costs as they were required to clean nicotine stains from the walls, blinds, cabinets, and floors throughout the rental unit as a result of the Tenants smoking in the rental unit. The Landlords submitted pictures and a cleaning receipt in support.

The Landlords testified that they were also required to perform an ozone air treatments to further rid the odour of smoke throughout the rental unit in the amount of \$89.20. The Landlords submitted a receipt for the ozone air treatment in support.

Lastly, the Landlords are claiming \$52.50 in relation to a screen door repair. The Landlords testified that at the start of the tenancy, the screen door was intact and in good working order. At the end of the tenancy, the Landlords noticed the bottom of the screen door was completely ripped. The Landlords submitted a picture as well as a screen repair receipt in support.

### Analysis

Based on the undisputed and affirmed oral testimony, 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 Landlords 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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Landlords testified that the Tenants smoked in the rental unit which caused the rental unit to absorb the smell of smoke throughout the unit. I accept that the Landlords attempted to re-rent the rental unit; however, it became apparent that they were unable to do so without performing deep cleaning to rid the unit of the smell.

I find that at the end of the tenancy, the parties agreed that there was an odour of smoke and staining in the rental unit, as indicated on the move out condition inspection report. I find it is more likely than not that the Tenants smoked in the rental unit, causing the rental unit to smell like smoke.

I find that the Landlords have established an entitlement to a monetary amount of \$682.45 in relation to carpet cleaning, deep cleaning of the floors, walls, cabinets and blinds, as well as the use of an ozone air treatment machine in order to rid the odour of smoke throughout the rental unit.

I further find that the Landlords have established an entitlement to a monetary amount of \$52.50 in relation to a screen door repair.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$834.95, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Cleaning:	\$682.45
Screen repair:	\$52.50
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$834.95</b>

### Conclusion

The Tenants breached the tenancy agreement. The Landlords are granted a monetary order in the amount of \$834.95. 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: April 18, 2019

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Residential Tenancy Branch