



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE PINES APARTMENTS and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 28, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for damage to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by C.C., an agent. The Tenant attended the hearing on his own behalf. Both C.C. and the Tenant provided affirmed testimony.

The Landlord testified that the Application package and an Amendment were served on the Tenant by registered mail. Canada Post registered mail customer receipts were submitted in support and the Tenant acknowledged receipt of these documents. No issues were raised during the hearing with respect to service or receipt of these documents. Therefore, pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The Tenant testified that he served a documentary evidence package on the Landlord b by registered mail on or about May 13, 2019. The Landlord acknowledged receipt and raised no issues with respect to these documents. Therefore, pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

However, the Tenant served a second documentary evidence package by leaving a copy at the door of the apartment building on or about May 16, 2019. On behalf of the Landlord, C.C. denied receipt. As these documents were not served in accordance with the *Act* and C.C. denied receipt, they have been excluded from consideration.

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.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant asked that the Application be dismissed. The bases for the request were set out in written submissions. First, the Tenant suggested the Application be dismissed because he was not provided with a copy of the move-in condition inspection report at the beginning of the tenancy. Second, the Tenant suggested the Application should be dismissed because of alleged alterations to the condition inspection report.

After careful consideration of the Tenant's submissions, I decline to dismiss the Application. The Landlord and the Tenant have a right to be heard and to have the matter determined by an unbiased decision maker. The Tenant's concerns about the condition inspection report are noted and have been considered as part of the Tenant's evidence and submissions.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
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 held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on November 5, 2018, and ended on February 28, 2019. Rent in the amount of \$850.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00, which are held by the Landlord.

The Landlord's claim is set out in a Monetary Order Worksheet, dated March 8, 2019. First, the Landlord claimed \$462.60 for cleaning required at the end of the tenancy. The cleaning, completed by other tenants in the building, was charged at a rate of \$30.00 per hour. Cleaning included light fixtures, kitchen cupboards, the kitchen sink, blinds, the fridge, the stove, the bathroom, walls, baseboards, floors, and window tracks. In support, the Landlord submitted photographic evidence depicting close-up images that included window sills and tracks, blinds, the fridge, the floor and baseboards, under the stove, a light fixture, a toilet bowl, and the oven. The Landlord also submitted a copy of the move-in condition inspection report that appears to be heavily marked with commentary.

The Landlord also submitted letters prepared by the tenants who witnessed the rental unit and performed cleaning at the Landlord's request, each of whom attended the hearing but did not participate. C.C. was reminded during the hearing that the hearing was the Landlord's opportunity to be heard and that witnesses could be called. However, C.C. elected not to do so and referred me to the witnesses written statements. In her type-written statement dated March 1, 2019, M.W. indicated she saw the Tenant's rental unit and agrees with C.C.'s time estimates. In a type-written receipt dated March 2, 2019, P.H. refers to a "deep move out clean for 6 hours" in the Tenant's rental unit. In a type-written statement dated March 3, 2019, D.G. indicated he attended the Tenant's rental unit with others to clean the "heavily soiled apartment", stating he cleaned for 6 hours and 42 minutes.

In reply, the Tenant testified that although the rental unit might not have been cleaned to the Landlord's standard, it was returned to the Landlord in the same condition in which it was received. In support, the Tenant submitted photographic evidence of the bedroom, kitchen, and living room taken at the end of the tenancy. The Tenant also submitted that the photographs submitted by the Landlord should have included a date and time stamp, and suggested the images could have been taken in any rental unit.

The Tenant also raised concerns about the lack of information in the letters provided by the tenants who cleaned the rental unit, noting they lacked specificity and professionalism.

Second, the Landlord claimed \$115.00 to repair a bi-fold closet door. Photographs of the damaged closet door were submitted in support, as was a receipt by P.C., who completed the repair.

In reply, the Tenant testified that he has no knowledge of the damage because the doors throughout the rental unit were not damaged when he vacated. The Tenant suggested the receipt submitted looks “fudged”.

Finally, the Landlord sought to recover the filing fee paid to make the Application. The Landlord also requested an order that the deposits held be retained in 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 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.

With respect to the Landlord's claim for \$462.60 for cleaning, I find there is insufficient evidence before me in support of the value of the Landlord's losses. As noted by the Tenant, the hourly rate charged by the tenants who cleaned the rental unit was not described fully in the documentary evidence. I also find the amount of time claimed for cleaning as set out in the Monetary Order Worksheet was excessive. For example, the Landlord claimed 4 hours to clean the inside of the oven. In addition, I found the photographs submitted by the Landlord to be of limited use as they primarily included close-up images of the areas of concern, making it difficult to determine the full extent of the cleaning required in the rental unit.

However, Policy Guideline #16 confirms and arbitrator may award nominal damages when there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I am satisfied that the rental unit was not cleaned thoroughly at the end of the tenancy and that the Landlord had to take steps to prepare the unit to be re-rented. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$150.00.

With respect to the Landlord's claim for \$115.00 to repair a broken closet door, I find there is insufficient evidence before me to grant the relief sought. I find the move-in condition inspection report submitted by the Landlord is of limited use due to the comments that appear to have been added. I also note the Tenant testified he has no knowledge of the damage. This aspect of the Landlord's claim is dismissed.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Policy Guideline #17 confirms that an arbitrator must order the balance remaining on a deposit when a landlord applies to retain the deposit but is not fully successful.

Therefore, pursuant to section 67 of the *Act* and Policy Guideline #17, I find the Tenant is entitled to a monetary order in the amount of \$600.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Cleaning (nominal damages):	\$150.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$425.00)
<i>LESS</i> pet damage deposit:	(\$425.00)
<b>TOTAL:</b>	<b>(\$600.00)</b>

### Conclusion

The Tenant is granted a monetary order in the amount of \$600.00. 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: May 30, 2019

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Residential Tenancy Branch