



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 4, 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
- 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 and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package and an amendment were served on the Tenants by UPS. Although not served in accordance with the Rules of Procedure, the Tenants acknowledged receipt of these documents. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the Application package and amendment were sufficiently served for the purposes of the *Act*. The Tenants did not submit documentary evidence in response to the Application.

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 damage to the rental unit?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on July 1, 2015. The parties agreed the tenancy ended when the Tenants vacated the rental unit on June 30, 2018. During the tenancy, rent was due in the amount of \$1,250.00 per month. The Tenants paid a security deposit of \$600.00, which the Landlord holds.

The Landlord's claims were set out in a Monetary Order Worksheet, dated January 9, 2019. First, the Landlord claimed \$450.00 to replace a stove in the rental unit. The Landlord testified the stove was in "really bad condition" at the end of the tenancy. The Landlord testified that the burners did not work and it appeared the stove had not been cleaned. Photographs taken before and after the tenancy were submitted in support. In addition, the Landlord submitted a hand-written receipt dated August 1, 2018, and a business card for an appliance store.

In reply, the Tenants testified that the rental unit was "cleaned very well" at the end of the tenancy, and suggested that the Landlord may have taken pictures of another rental unit, which was denied by the Landlord. Throughout their testimony, the Tenants indicated the Landlord did not inspect the rental property when they vacated the rental unit.

Second, the Landlord claimed \$180.00 for professional cleaners required at the end of the tenancy. Various photographs submitted by the Landlord included images of a dirty bathtub, cupboard, stove, drawer, floor areas behind the stove and fridge, and toilet seat. In addition, the Landlord provided an undated, hand-written receipt for the amount claimed.

In reply the Tenants again asserted the rental unit was "cleaned very well" at the end of the tenancy.

Third, the Landlord claimed \$135.00 for the cost of a plumber to unplug the bathtub drain. The Landlord testified that one of the Tenants has very long hair that clogged the bathtub drain. According to the Landlord, the issue arose during the tenancy and the Tenants were asked to maintain the bathroom. The Tenants were also provided with a strainer for use to prevent clogs. A receipt dated July 4, 2018, was submitted in support.

In reply, the Tenants acknowledged the issue arose during the tenancy but otherwise denied responsibility.

Fourth, the Landlord claimed \$170.00 for general labour to install the stove and replace blinds. The Landlord testified that she needed assistance to install these items. Photographs depicting damaged blinds were submitted in support. A receipt in the amount claimed, dated July 4, 2018, was submitted in support.

In reply, the Tenants again denied the stove needed to be replaced and therefore dispute this aspect of the Landlord's claim. In addition, the Tenants denied the blinds were damaged during the tenancy.

Fifth, the Landlord claimed \$500.00 to repair and paint various rooms in the rental unit. She testified that the drawing, writing, and scratches appeared in almost every room. Photographs depicting damaged walls and a hand-written receipt dated July 1, 2018, were submitted in support.

In reply, the Tenants asserted the rental unit was cleaned at the end of the tenancy and that the Landlord did not check the condition of the rental unit on the day the Tenants moved out.

Sixth, the Landlord claimed \$1,266.60 for materials and a tool required to perform repairs. The Landlord referred to various items purchased and tools required to make the repairs, including plumbing supplies, a new toilet seat, blinds, a door handle, a door latch, and a sponge. Although receipts were submitted in support, the Landlord was unable to confirm how the amount sought was calculated and was uncertain with respect to precisely what was purchased.

In reply, the Tenants asserted they were unable to understand this aspect of the Landlord's claim and maintained the rental unit was left in good condition.

Seventh, the Landlord claimed \$207.43 for photocopy and printing costs. The Landlord was advised that these items are generally not recoverable in dispute resolution proceedings and would not be considered as part of the Landlord's Application.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application. The Landlord also requested that she be permitted to retain 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 \$450.00 to replace a stove in the rental unit, I accept the Landlord's testimony and documentary evidence regarding the condition of the stove at the end of the tenancy. Photographs taken before and after the tenancy depict the condition of the stove at those times, which I find goes beyond reasonable wear and tear. I do not accept the Tenants' suggestion that the rental unit was cleaned well at the end of the tenancy, or that the Landlord submitted fraudulent photographs depicting a different rental unit and stove. I also note the Tenants' testimony was not supported by any documentary evidence. Therefore, I grant the Landlord a monetary award in the amount of \$450.00.

With respect to the Landlord's claim for \$180.00 for professional cleaners I find the Landlord is entitled to the relief sought. The photographic evidence submitted by the Landlord confirms the rental unit was not well cleaned well at the end of the tenancy, as suggested by the Tenants, and that cleaning was required. I grant the Landlord a monetary award in the amount of \$180.00.

With respect to the Landlord's claim for \$135.00 for the cost of a plumber I find the Landlord is entitled to the relief sought. The parties confirmed there were discussions about the bathtub drain during the tenancy. Further, it was not disputed that the Landlord asked the Tenants to be vigilant about long hair, and provided the Tenants with a strainer for the bathtub. However, a plumber was required to deal with the clogged bathtub drain. I grant the Landlord a monetary award in the amount of \$135.00.

With respect to the Landlord's claim for \$170.00 for labour to install the stove and replace blinds, I have found that the stove needed to be replaced. Therefore, I find it is reasonable to grant a monetary award for installation. In addition, I am satisfied that blinds were damaged during the tenancy and needed to be replaced. Photographic evidence submitted by the Landlord confirmed the damage went beyond reasonable wear and tear. Therefore, I grant the Landlord a monetary award in the amount of \$170.00.

With respect to the Landlord's claim for \$500.00 to paint various rooms in the rental unit, I accept the Landlord's evidence of the condition of the walls at the end of the tenancy, which was supported by photographic evidence. Drawing, writing, and scratching of walls is not normal wear and tear. I grant the Landlord a monetary award in the amount of \$500.00.

With respect to the Landlord's claim for \$1,266.60 for materials and tools, I find there is insufficient evidence before me to grant the relief sought. The Landlord was unable to refer me to specific receipts or to demonstrate how the amount claimed was calculated. In addition, the Tenants indicated they were unable to understand this aspect of the Landlord's claim. Therefore, 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. Further, I order that the security deposit held be applied to the Landlord's monetary award in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$835.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Replace stove:	\$450.00
Cleaning:	\$180.00
Plumber:	\$135.00
Install stove/blinds:	\$170.00
Painting:	\$500.00
<i>LESS</i> security deposit:	(\$600.00)
<b>TOTAL:</b>	<b>\$835.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$835.00. 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 28, 2019

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Residential Tenancy Branch