



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. I find the parties were served in accordance with the *Act*.

### Preliminary Matter: Service of Evidence

The landlord admitted that he did not serve his evidence. In addition, the tenants admitted that they did not serve their evidence on the landlord until the day before the hearing.

*Residential Tenancy Branch Rules of Procedure*, sections 3.1, 3.14 and 3.15 states that regarding service of evidence:

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following: a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution; b) the Respondent Instructions for Dispute Resolution; c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]. See Rule 10 for documents that must be served.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

### **3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

In this matter, both the landlord and the tenants have failed to serve their evidence in compliance with the *Residential Tenancy Branch Rules of Procedure*, sections 3.1, 3.14 and 3.15. I find that the admission of the landlord's evidence and the tenants' evidence would prejudice the other party and result in a breach of the principles of natural justice. Accordingly, all of the landlord's evidence and all of the tenants' evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

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

#### Background and Evidence

The landlord testified that the tenancy lasted for about two years and the tenants vacated the property on March 19, 2019. The parties agreed that the rent was \$1,400.00 and the landlord holds a \$700.0 security deposit.

The parties agreed that the tenants owed the landlord rent in the amount of \$135.48 because the tenants moved out a few days after the agreed move out date.

The landlord testified that a condition inspection report was prepared on move-in and move-out. However, the landlord testified that the tenants refused to sign the condition inspection report on move-out because they disagreed with the entries the landlord wrote on the form.

The landlord testified that the rental unit was left in a dirty condition and required a cleaning after move out. Specifically, the landlord testified that carpets were stained, a ventilation filter needed to be replaced and there was grease on the walls in the kitchen and there was urine stains on the floor in the bathroom. The landlord testified that it cost \$200.00 to have the rental unit cleaned.

The tenants testified that the rental unit was left in a clean condition. The testified that, after they cleaned the rental unit, the landlord advised them that he was going to deduct money from the security deposit to clean the rental unit. To avoid this deductions, the tenants testified that they returned to the rental unit and cleaned it again.

The landlord also claimed compensation for repairs to a sliding closet door. The landlord testified that property management fixed the sliding door during the tenancy and sent they sent the landlord an invoice for \$141.75 for the repair costs. The tenants testified that they were not responsible for these repair costs.

### Analysis

The parties agreed that the tenants owed the landlord \$135.48 in unpaid rent because the tenants moved out of the rental unit a few days late. To give effect to this agreement, I order that tenants to pay the landlord the amount of \$135.48 pursuant to section 63 of the *Act*.

I will now address the landlord's claims for compensation which were not agreed upon.

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.

I find that the landlord has not provided sufficient evidence to establish that the rental unit was left in a dirty condition on move-out. The parties provided conflicting testimony regarding the condition of the rental unit on move-out. Further, the landlord did not provide photographs of the rental unit or a copy of the condition inspection report to corroborate his testimony. In the absence of any corroborating evidence, I find the testimony of both parties to be equally plausible. As such, I find that the landlord has failed to provide sufficient evidence to prove his claim for cleaning damages. Accordingly, I dismiss the landlord's application for reimbursement of cleaning expenses.

In addition, the landlord has claimed reimbursement of the repair costs of the closet sliding door. Section 32(2) of the *Act* states that:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

However, Section 32(4) of the *Act* states that "A tenant is not required to make repairs for reasonable wear and tear." In this matter, the landlord has failed to provide sufficient evidence to establish that the damage to closet sliding door was not the result of reasonable wear and tear. As such, the landlord's application for reimbursement of the closet repair costs is dismissed.

Since the landlord has been generally unsuccessful in this matter, the landlord's application for reimbursement of the filing fee is dismissed pursuant to section 72 of the *Act*.

According, I order that the landlord pay the sum of \$564.52 to the tenants as calculated below.

<u>Item</u>	<u>Amount</u>
Security deposit held by landlord	\$700.00
Agreed damages to landlord for unpaid rent	-\$135.48
Amount owed to tenant	\$564.52

### Conclusion

I grant the tenants a monetary order in the amount of **\$564.52**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be enforced as an order of that 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: June 19, 2019

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Residential Tenancy Branch