



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC 0643789 LTD  
and [tenant name suppressed to protect privacy]

## **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 award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The co-tenant JD (the "tenant") primarily spoke on behalf of the tenants.

The tenants confirmed receipt of the landlord's application and evidence. Based on the testimonies I find that the landlord's materials were served on the tenant in accordance with sections 88 and 89 of the Act.

The tenant testified that they had uploaded their evidentiary materials but had not served it on the landlord. The tenant said they expected that uploading the materials constituted sufficient service. Based on the testimony I find that the tenants have not served the landlord with their evidence. I find that consideration of evidence that has not been served on a party to be prejudicial. On this basis I find that there is undue prejudice to admitting the tenant's written evidence and exclude it from this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

The parties agreed on the following facts. This tenancy originally began in October, 2018 and ended on March 31, 2019. The monthly rent was \$1,100.00 payable on the first of each month. The tenants paid a security deposit of \$450.00, key deposit of \$50.00 and Hydro deposit of \$60.00, for a total amount of \$560.00 which is still held by the landlord. No condition inspection report was prepared at any time for this tenancy. The tenants provided a forwarding address to the landlord on April 8, 2019. The tenants did not provide written authorization that the landlord may retain any portion of the deposits for this tenancy.

The landlord seeks a monetary award in the amount of \$3,207.07 comprised of the following items:

Item	Amount
Unpaid Rent March 2019	\$1,100.00
Unauthorized Withdrawal	\$1,228.00
Repairs Flooring	\$195.00
Unpaid Hydro Bill	\$52.08
Landfill Costs	\$47.25
Repairs Fridge	\$351.50
Replacing Locks	\$93.24
Cleaning Rental Unit	\$140.00
<b>TOTAL</b>	<b>\$3,207.07</b>

The landlord submits that the tenants failed to pay rent for the month of March, 2019 and there is an arrear of \$1,100.00 for this tenancy.

The parties testified that there was a fund transfer of \$1,228.00 from the landlord to the tenants. The landlord said that this was a mistake and they had authorized the transaction believing it was the tenants' rent payment. The tenant testified that they had requested a refund of rent due to the suite condition and believed it to be the landlord agreeing to a payment.

The landlord submits that the rental unit was left in an unclean state requiring considerable cleaning, repairs and rubbish removal. The landlord submitted into evidence photographs of the suite and invoices for the work performed. The landlord also submits that the tenants failed to pay the final Hydro utility bill.

The tenant disputes the landlord's evidence and submits that the photographs submitted by the landlord are exaggerated or fabricated. The tenant testified that they believe the photographs of the damaged appliance show a different unit than that which was in the rental suite.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

I accept the evidence of the parties that the tenants provided a forwarding address in writing on April 8, 2019. The landlord filed their application for dispute resolution on April 19, 2019. As such I find that the landlord was within the 15 days provided under the *Act* to file an application for authorization to retain the security deposit.

However, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report. Accordingly, I find that the landlord has extinguished their right to claim against the security deposit for damage to residential property as they failed to comply with section 23 of the *Act* and complete a condition inspection report in accordance with the regulations.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

A tenant must pay rent when it is due in accordance with section 26(1) of the *Act*, regardless of whether or not the landlord has complied with the *Act*.

I accept the evidence of the parties that the tenants failed to pay rent for March, 2019. While the tenants made some submissions that they felt they did not owe rent due to the condition of the suite, I find that the tenants had no right under the *Act* to withhold rent payment. Accordingly, I accept that there is a rental arrear of \$1,100.00 and issue a monetary award in that amount.

I accept the evidence of the landlord that there was a mistaken transfer of \$1,228.00 to the tenants. I do not find the tenants' submission that this was a payment agreed to by the landlord to be convincing or supported in the evidence. I find that this transfer was a mistake and the

tenants have no right to retain it. I issue a monetary award in the landlord's favour in this amount.

I accept the evidence of the landlord that the tenants failed to pay the Hydro utilities and there is an arrear in the amount of \$52.08 as at the date of the hearing. I issue a monetary award in the landlord's favour in that amount.

I accept the landlord's evidence that the rental unit required considerable work at the end of the tenancy. Even in the absence of a condition inspection report prepared at the start of the tenancy I find that the photographs submitted into evidence show that the rental suite is in a state beyond simple wear and tear to be expected over the course of a tenancy. I find that the invoices submitted into evidence by the landlord to be reasonable for the repairs undertaken. I find that the scope of work undertaken by the landlord, as described in the invoices to have been limited to restoring the rental unit to its pre-tenancy conditions rather than improvements or upgrades.

I do not find the tenants' submission that the landlord has fabricated their photographic evidence to be convincing. I find the tenants' submission to not be supported in the documentary evidence. While the tenant disputes that the photographs submitted are of the actual appliances contained in the rental unit, I find there is little independent evidence in support of the tenants' submissions. I find the tenant's suggestion that the landlord has found an identical model fridge which has been damaged that they are now using to further their monetary claim to stretch credulity.

I accept the landlord's evidence that they suffered damages and loss in the amounts claimed for various work and unpaid utility bills. Accordingly, I issue the landlord a monetary award in that amount.

As the landlord was successful in their application they may recover the \$100.00 filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's deposits in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$2,747.07 under the following terms:

Item	Amount
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Unpaid Rent March 2019	\$1,100.00
Unauthorized Withdrawal	\$1,228.00
Repairs Flooring	\$195.00
Unpaid Hydro Bill	\$52.08
Landfill Costs	\$47.25
Repairs Fridge	\$351.50
Replacing Locks	\$93.24
Cleaning Rental Unit	\$140.00
Filing Fee	\$100.00
Less Deposits	-\$560.00
<b>TOTAL</b>	<b>\$2,747.07</b>

The landlord is provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 23, 2019

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Residential Tenancy Branch