



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDCL-S, FFL  
                                 Tenants: MNDCT, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on March 2, 2019, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on March 14, 2019, (the “Tenants’ Application”). The Tenants amended their Application on April 12, 2019. The Tenants applied for the following relief, pursuant to the *Act*:

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

The Landlord as well as the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

### Preliminary Matters

The Tenants made an amendment to their Application on April 12, 2019 to withdraw their claims to cancel a One Month Notice for Cause, a request for an order of possession, an order to allow access for the tenant or guests, and an order for the

landlord to provide a service or facility. The Tenants also amended their Application seeking a monetary order for compensation in the amount of \$18,501.92.

The Landlord testified that she served her Application and documentary evidence package to the Tenants by registered mail on March 3 and June 4, 2019. The Tenants confirmed receipt. The Tenants testified that they served the Landlord with their Application and documentary evidence by registered mail on March 14, 22, 2019, as well as the amendment to their Application on April 16, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties 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. Is the Landlord entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenants' security deposit pursuant to Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
5. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 12, 2018. The Tenants paid rent in the amount of \$1,400.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00, as well as a pet deposit in the amount of \$150.00, which the Landlord continues to hold.

The parties agreed that on January 28, 2019 the washing machine in the rental unit malfunctioned, resulting in a flood to the rental unit. The flood caused significant damage to the rental unit as well as two units below. As a result of the flood, the Tenants relocated to a different residence while work took place to remediate the rental unit. The Tenants stated that they had intentions on returning to the rental unit once the remediation was completed; however, they were served a One Month Notice to End Tenancy for Cause (the "One Month Notice") on March 5, 2019 in relation to the flood. The Tenants stated that they made an application to dispute the One Month Notice; however, withdrew their application after finding a new residence on April 1, 2019.

### Landlord's Claim

The Landlord is claiming to retain the Tenants' security deposit and pet deposit for a combined amount of \$850.00. The Landlord stated that the parties had a verbal agreement at the start of the tenancy that the Tenants would paint the rental unit in exchange for half a month of rent, equivalent to \$700.00. The Landlord stated that after the flood, she inspected the rental unit to discover that the Tenants had not painted as promised.

Furthermore, the Landlord stated that during her inspection, she discovered that the Tenants had stuck a screen to the window which was difficult to remove. The Landlord stated that there was damage to the walls, baseboards, and scratches to the floor. The Landlord stated that the parties completed a condition inspection report at the start of the tenancy; however, no condition inspection report was completed at the end of the tenancy.

In response, the Tenants stated that they had not intended to end the tenancy following the flood; therefore, they had not cleaned the rental unit as a result. The Tenants stated that they did not cause any damage to the rental unit beyond normal wear and tear. The Tenants acknowledged that they did not paint the rental unit during the tenancy as part of their verbal agreement. The Tenants stated that they offered to complete the work following the end of the tenancy; however, the Landlord failed to respond to their offer.

The Landlord is also seeking \$7,000.00 in compensation relating to strata deductibles. The Landlord stated that she is responsible for paying a \$5,000.00 deductible for the rental unit, as well as \$1,000.00 for each of the two units that were damaged below the rental unit as a result of the flood. The Landlord stated that the flood which occurred in the rental unit on January 28, 2019 could have been prevented if the Tenants had stayed home while the washing machine was in operation.

The Landlord stated that she received a phone call from the Tenants when they returned home from walking their dog, at which point they discovered that the rental unit had flooded. The Landlord stated that she was out of town at the time. The Tenants stated that they attempted to mitigate the damage to the rental unit as the Landlord was unavailable to attend the rental unit. The Tenants stated that they obtained a shop vac and immediately began removing the water from the rental unit.

### Tenants' Claim

The Tenants are claiming monetary compensation in the amount of \$18,501.92 in relation to the flood. The Tenants set out their claim on a monetary worksheet which was included in the Tenants' Application.

The Tenants are claiming \$5,600.00 which is equivalent to 4 months' rent in relation to the Landlord completing repairs to the rental unit without providing the Tenants with proper Notice to End Tenancy for Landlord's Use. The Landlord stated that the only work that was completed to the rental unit was to remediate the damage caused by the flood. The Landlord stated that the flood could not have been anticipated, therefore, notice to end tenancy could not have been provided.

The Tenants are claiming for loss of quiet enjoyment as a result of being forced out of the rental unit following the flood. The Tenants stated that the Landlord was threatening and served them a One Month Notice to end Tenancy following the flood. The Tenants stated that the Landlord did not service the washing machine which could have prevented the flood. The Tenants did not specify the monetary amount that they were seeking.

In response, the Landlord stated that the Tenants did not advise her that there were any issues with the washing machine at any point throughout the tenancy. Furthermore, the Landlord stated that the Tenants had another residence to stay at while remediation took place at the rental unit.

The Tenants are seeking \$1051.92 relating to moving expenses incurred following the flood, which includes; moving van rental, storage fees, and cost of movers. The Tenants stated that after the flood, they were able to stay with a friend, before securing their own residence on April 1, 2019. The Tenants stated that they did not have insurance; therefore, they had to bear the costs of the move. The Landlord stated that the Tenants should have had insurance and that she should not be responsible for paying for moving costs.

The Tenants are seeking monetary compensation in the amount of \$1,150.00 as the Tenants had to stay with a friend's vacation rental following the flood on January 28, 2019. The Landlord stated that she did not charge the Tenants any rent after the flood, therefore, she should not be responsible for paying for the Tenants' accommodations following the flood.

The Tenants stated that they were served a One Month Notice on March 5, 2019. The Tenants stated that they initially made an application to dispute the One Month Notice, however, withdrew their application after securing a new residence for April 1, 2019. The Tenants stated that their new tenancy requires them to pay \$2,200.00 per month as opposed to \$1,400.00 that they had been paying to the Landlord. The Tenants are claiming \$9,600.00 which represents the difference of rent between the two tenancies over the course of one year. In response, the Landlord stated that she was offering the Tenants a good deal on the rental unit, and that the current rent the Tenants are now paying is a true reflection of the rental market. As such, the Landlord doesn't feel as though she should pay the difference.

The Tenants are claiming \$250.00 as a result of a pre-existing injury becoming re-aggravated during the move. The Tenants stated that the female Tenant required Chiropractic visits as well as counselling to cope with the pain of moving.

Lastly, the Tenants are seeking the return of their security deposit and pet totalling \$850.00.

### Analysis

Based on all of the above, the evidence and testimony, 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 both parties have made an application for monetary compensation. The burden of proof is on the Applicant 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 Respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

#### Landlord's Claim

The Landlord applied to retain the Tenants' security and pet deposits in the amount of \$850.00 in relation to the Tenants failing to paint the rental unit which they had verbally agreed to do. The Landlord also stated that there was damage caused to the rental unit by the Tenants during the tenancy. The Tenants stated that they offered to paint the rental unit following the end of the tenancy to fulfill their verbal agreement; however, the Landlord has yet to respond the Tenants' offer.

I find that the Landlord has provided insufficient evidence to confirm the details of the verbal agreement to determine what the terms of the agreement were. I find that the tenancy ended on uncertain terms, and that the Tenants made an offer to paint the rental unit, to which the Landlord has not yet accepted. As a result, I find that the Landlord has not mitigated her loss and is therefore not entitled to compensation relating to the Tenants not painting the rental unit.

In relation to the Landlord's claim for damage to the rental unit, I find that the parties did not complete a move out condition inspection report at the end of the tenancy, therefore, I find that the Landlord has provided insufficient evidence to demonstrate that the condition of the rental unit was different from the start of the tenancy compared to the end of the tenancy. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$7,000.00 in relation to strata deductibles as a result of the flood which occurred in the rental unit of January 28, 2019. I find that the Landlord has provided insufficient evidence to demonstrate that the flood was a result of the Tenants

breaching the *Act*. I find that it is unreasonable to expect the Tenants to stay in the rental unit while the washing machine is in use. I further find that the Landlord did not provide confirmation of the loss incurred as a result of the flood. The Landlord submitted “web archive” evidence which could not be viewed.

Lastly, I find that the Landlord did not mitigate the loss to rental unit after learning about the flood. Instead, I find that the Tenants took it upon themselves to acquire a shop vac to commence the removal of the water which was damaging the rental unit. As such, I find that the Landlord is not entitled to any compensation towards her claim and dismiss the Landlord’s claim without leave to reapply.

In light of the above, I find that the Tenants’ are entitled to the full return of their security and pet deposit in the amount of \$850.00.

#### Tenants’ Claim

The Tenants are claiming \$5,600.00 which is equivalent to 4 months’ rent in relation to the Landlord completing repairs to the rental unit without providing the Tenants with proper Notice to End Tenancy for Landlord’s Use. In this case, I am satisfied that the work completed to the rental unit was in relation to remediation as a result of the flood rather than an opportunity to complete improvements to the rental unit. As such, I dismiss this portion of the Tenants’ claim without leave to reapply.

The Tenants are claiming for loss of quiet enjoyment as a result of being forced out of the rental unit following the flood. The Tenants stated that the Landlord was threatening and served them a One Month Notice to end Tenancy following the flood. The Tenants stated that the Landlord did not service the washing machine which could have prevented the flood. The Tenants did not specify the monetary amount that they were seeking.

In this case, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord breached the *Act*, resulting in the flood. I find that the Tenants did not express any concerns to the Landlord about the washing machine prior to the flood; therefore, it is unreasonable to expect that the Landlord could have prevented the flood. I further find that the Tenants have provided insufficient evidence to indicate the value of their loss. In light of the above, I dismiss this portion of the Tenants’ claim without leave to reapply.

The Tenants are seeking \$1051.92 relating to moving expenses incurred following the flood, which includes; moving van rental, storage fees, and cost of movers. The Tenants are claiming \$1,150.00 as the Tenants had to stay with a friend's vacation rental following the flood on January 28, 2019. The Tenants are also claiming \$250.00 for medical expenses. The Tenants stated that they did not have insurance; therefore, they had to bear the costs of the move and new accommodations and medical expenses. After finding that the Landlord did not breach the *Act* in relation to the flood, I find that the Tenants are not entitled to recovering moving cost, nor are they entitled to recover the cost of accommodations or medical expenses following the flood. As such, I dismiss these portions of the Tenants' Application without leave to reapply.

The Tenants stated that they were served a One Month Notice on March 5, 2019. The Tenants stated that they initially made an application to dispute the One Month Notice, however, withdrew their application after securing a new residence for April 1, 2019. The Tenants stated that their new tenancy required them to pay \$2,200.00 per month as opposed to \$1,400.00 that they had been paying. The Tenants are claiming \$9,600.00 which represents the difference in rent between the two tenancies over the course of one year.

I find that the Tenants accepted the end of their tenancy after withdrawing their application to dispute the Notice to End Tenancy served by the Landlord. I find that the Tenants chose to commence a new tenancy at a higher cost on their own volition. As such, I dismiss the Tenants' claim for compensation in the amount of \$9,600.00 without leave to reapply.

As previously determined, the Tenants are entitled to the return of their security deposit.

As neither party was successful with their Application, I decline to award the return of the filing fee to either party.

In light of the above I find that the Tenants are entitled to a monetary order in the amount of \$850.00 for the return of their security and pet deposits.

### Conclusion

Both the Landlord and the Tenants were unsuccessful with the respective Applications. The Tenants are granted a monetary order in the amount of \$850.00 for the return of their security and pet deposits. The order may be filed in and enforced as an order of the Provincial Court of BC (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: July 8, 2019

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Residential Tenancy Branch