



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDL-S MNRL-S

### Introduction and Procedural Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for unpaid rent and for a monetary order for money owed or compensation for damage, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenants did not attend.

Prior to this hearing, the landlord filed an ex parte application for an order for substituted service pursuant to section 71(1) of the Act, requesting authority that her application for dispute resolution be served to the tenants in a different manner required under section 89 of the Act.

In a decision of May 7, 2019, by an adjudicator for the Residential Tenancy Branch (the "RTB"), the landlord was granted authority allowing the landlord to serve her application for dispute resolution on the tenants by an email the tenants provided to the landlord for a return of their security deposit. The adjudicator also ordered the landlord to provide proof of service which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenants in accordance with the decision of May 7, 2019.

Upon review of the landlord's evidence, I find that the landlord submitted sufficient proof of screen shots that tenant CN was served in a manner complying with the order for substituted service dated May 7, 2019, as the email was read on May 8, 2019. As a result, the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary Issue

~~I note from the evidence submitted by the landlord that respondent, SN, although listed as a tenant, did not sign the written tenancy agreement. I have therefore excluded SN from further consideration as he had not obligated himself under this tenancy agreement.~~ I have also excluded another party named by the landlord in her application for dispute resolution, as the written tenancy agreement shows that he is the 5 year old child of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for other monetary compensation, and to recover the filing fee?

### Background and Evidence

The written tenancy agreement and other evidence from the hearing shows that this six month, fixed term tenancy began on March 1, 2019, that monthly rent due under the tenancy agreement was \$1,750.00, and that the tenants paid a security deposit of \$875.00. The landlord confirmed that she has retained the tenants' security deposit.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Filing fee	\$100.00
2. April rent	\$1,750.00
3. Liquidated damages	\$450.00
4. Damage to a chair	\$250.00
5. Painting	\$50.00
6. Counter top damage	\$582.24

7. Prices lock and safe	\$309.31
8. Carpet cleaning	\$117.86
9. New locks	\$31.34
10. Unpaid hydro	\$181.17
11. Cleaning, 6 hours	\$150.00
<b>TOTAL</b>	<b>\$3,971.92</b>

I note that the landlord's own calculation in her evidence showed a total monetary claim of \$4,290.60 for the same figures as above.

*Unpaid rent*-The landlord submitted that the tenants vacated the rental unit on or about April 17, 2019, without paying rent for April 2019.

*Liquidated damages-*

The landlord submitted that the tenant owes the amount of \$450.00 as liquidated damages due under clause 6 of the written tenancy agreement, as they vacated the rental unit with no notice prior to the end of the fixed term.

*Damage to a chair-*

The landlord submitted that the tenants damaged the club chair that came with the rental unit, that it was only a year old, and that she had to get rid of the chair. The landlord submitted that this cost was what she paid for the chair.

*Painting-*

The landlord submitted that the tenants ripped off laminate signs she had in the rental unit for the benefit of tenants, which took off the paint. Although the actual cost to repaint was \$80.00, the landlord is seeking \$50.00.

The landlord submitted photos of the damaged walls.

*Counter top damage-*

The landlord submitted that the tenants damaged the countertops by putting burn marks on the surfaces. The landlord submitted that the countertops are discoloured and are an

eyesore. The landlord submitted further that the costs claimed was the more conservative estimate of the two she obtained.

*Prices lock and safe-*

The landlord submitted that the tenants wanted a lock change at the entrance and threatened to drill holes in the fire escape door. This caused the landlord to change the locks, due to the threats.

*Carpet cleaning-*

The landlord submitted that the carpet was left very dirty by the tenants and it required cleaning, as the tenants failed to do so.

*New locks-*

The landlord submitted that the tenants did not return the keys, which caused her to purchase new locks at a home improvement store.

*Unpaid hydro-*

The landlord submitted that the tenants did not pay their 30% portion of the hydro bill, as required in the addendum of the written tenancy agreement. The landlord submitted that she arrived at the figure claimed by taking a per day use cost, multiplied that amount by 61 days, and assessed 30% of the costs.

The landlord submitted a copy of the hydro bill.

*Cleaning, 6 hours-*

The landlord submitted that it took more than 6 hours to clean the mess left by the tenants, as the bathroom alone took 2 hours. The landlord submitted the tenants scratched the floor and damaged other parts of the rental unit.

The landlord's additional relevant evidence included receipts for costs claimed, the hydro bill, estimates of costs claimed, a condition inspection report ("CIR"), photographs of the condition of the rental unit and the damaged items.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

As to the costs claimed by the landlord associated with cleaning and damage, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear.

#### *Unpaid rent, April-*

I find the landlord submitted that the tenants owed the monthly rent of \$1,750.00 due under the written tenancy agreement on April 1, 2019, and failed to do so.

I grant the landlord a monetary award of \$1,750.00.

#### *Liquidated damages-*

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, I find the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of \$450.00 in the event the tenants ended the fixed term tenancy prior to the date mentioned, here August 31, 2019. I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant is responsible for paying the liquidated damages fee of \$450.00 and I grant the landlord a monetary award in that amount.

*Damage to a chair-*

I find the landlord submitted sufficient, unopposed evidence that the tenants damaged the chair to such an extent it could not be repaired. I find the costs of replacement supplied by the landlord to be reasonable and I therefore find the landlord is entitled to a monetary award as claimed of \$250.00.

*Painting-*

I find the landlord submitted sufficient, unopposed evidence that the tenants damaged the walls which went beyond reasonable wear and tear. I find the costs supplied by the landlord to be reasonable and I therefore find the landlord is entitled to a monetary award as claimed of \$50.00.

*Counter top damage-*

I find the landlord submitted sufficient, unopposed evidence that the tenants damaged the counter top and that it will require an extensive repair as claimed. I find the estimated costs supplied by the landlord to be reasonable and I therefore find the landlord is entitled to a monetary award as claimed of \$582.24.

*Prices lock and safe-*

I find the landlord provided sufficient, unopposed evidence that she was required to change the locks, due to the threats of damage by the tenants.

I find the landlord is entitled to a monetary award as claimed of \$309.31.

*Carpet cleaning-*

I find the landlord submitted sufficient documentary and photographic evidence that the tenant failed to properly and reasonably clean the carpet and that it was necessary for the landlord to shampoo the carpet.

I therefore find the landlord is entitled to a monetary award as claimed of \$117.86.

*New locks-*

Under the Act, a tenant is required to return the keys to the rental unit at the end of a tenancy and in this case, I find the landlord submitted sufficient evidence that the tenant did not.

I find the landlord is entitled to a monetary award as claimed, in the amount of \$31.34.

*Unpaid hydro-*

I find the landlord submitted sufficient, unopposed evidence that the tenants were obligated to pay 30% of the hydro costs and failed to do so. I therefore find the landlord is entitled to a monetary award as claimed of \$181.17.

*Cleaning, 6 hours-*

I find the landlord submitted sufficient, unopposed evidence that the rental unit required extensive cleaning as the tenants failed to leave the rental unit reasonably clean. I find the landlord's costs to be reasonable and I therefore find the landlord is entitled to a monetary award as claimed of \$150.00.

I grant the landlord recovery of her filing fee of \$100.00, due to her successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord's application and find she is entitled to a total monetary award of \$3,971.82, comprised of unpaid rent for April 2019 of \$1,750.00, liquidated damages for \$450.00, chair damage and replacement for \$250.00, painting of \$50.00, countertop damage of \$582.24, lock change of \$309.31, carpet cleaning of \$117.86, new locks of \$31.24 unpaid hydro of \$181.17, cleaning of \$150.00, and her filing fee of \$100.00 paid for this application.

At the landlord's request, I allow her to retain the tenant's security deposit of \$875.00 in partial satisfaction of her monetary award of \$3,971.82.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3,096.82.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, has been authorized to retain the tenant's security deposit of \$875.00 and she has been awarded a monetary order for the balance due, in the amount of \$3,096.82.

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 24, 2019

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Residential Tenancy Branch