



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: FFL MNDCL-S MNDL-S MNRL-S  
Tenants: MNDS, 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 May 12, 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;
- a monetary order for unpaid rent and utilities;
- 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 May 22, 2019, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; 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

At the start of the hearing, the Landlord requested that the Tenants dispute resolution Application be heard along with his dispute resolution Application which was scheduled at a later date. The Landlord stated that in his Application, he was claiming to retain the Tenant's security deposit. The hearing before me today was the Tenants' Application for the return of the Tenants' security and pet damage deposits.

During the hearing, the parties discussed and agreed that the Tenants' and the Landlord's Applications should be heard together. The parties stated that they had received each other's Application and documentary evidence packages in advance of the hearing and were prepared to proceed on both Applications. The parties agreed to have their Applications crossed and heard together during the hearing before me today.

Given the nature of the Tenants' and Landlord's Applications, as well as the agreement between the parties to have both Application heard at the together, I grant the amendment to cross both Applications to be heard during this hearing.

The Landlord testified that he served his Application and documentary evidence packages to the Tenants by registered mail on May 11 and 16, 2019. The Tenants confirmed receipt. The Tenants testified that they served the Landlord with their Application and documentary evidence by registered mail on May 29, 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 unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 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. Is the Landlord entitled to retain the Tenants' security deposit pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to an order granting the return of the security deposit and pet damage deposit, pursuant to Section 38 of the *Act*?
6. 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 January 1, 2017. The Tenants paid rent in the amount of \$1,560.00 which was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, which the Landlord continues to hold. The tenancy ended on April 30, 2019.

### The Landlord's Claim

The Landlord set out his claim on a monetary worksheet which was submitted in the Landlord's Application. The Landlord is seeking the following;

The Landlord has claimed for \$1,560.00 in unpaid rent for the month of April 2019. During the hearing, the parties agreed that this claim had already been decided on in a previous dispute resolution proceeding. As such, the Landlord agreed to withdraw this claim from his Application.

The Landlord is claiming \$426.63 in relation to unpaid Hydro bills between the dates of Jan 22 to March 21, 2019, and from March 22 to April 30 2019. The Landlord is also claiming \$309.90 for an unpaid water bill between March 1 and April 30, 2019. The Landlord stated that the agreement between the parties is that the Tenants are responsible for paying 50% of the utilities to the Landlord. The Landlord submitted a copy of the bills in support.

In response, the Tenants stated that they agree that they are responsible for paying these amounts. The Tenants stated that they have already paid these amounts to the Landlord; therefore, they are unsure as to why he is claiming for them again. The

Tenants provided a copy of the e transfer history report which indicated that the Tenants paid their share of the bills to the Landlord on April 3, and again on May 15, 2019.

The Landlord stated that at the end of the tenancy, he noticed that the stove had an element that was not working and that the door to the oven was unable to open. The Landlord stated he spent three hours trying to repair the stove himself and is claiming to be compensated \$45.00 for each hour spent fixing the stove, in the amount of \$135.00. The Landlord is also claiming \$40.00 for the parts needed to make the repairs to the stove. In response, the Tenants stated that the stove worked fine during their tenancy and that they set the oven to a clean cycle at the end of their tenancy, which would explain why the door was unable to open for some time.

The Landlord is claiming \$300.00 for damaged items found in the rental unit. Specifically, the Landlord stated that he is seeking \$200.00 for damage to a barbeque which was left uncovered by the Tenants, causing it to rust. The Landlord is claiming \$75.00 for damage caused by the Tenants to a desk chair, as well as \$25.00 in relation to a torn curtain. The Tenants state that they did not use the Landlord's barbeque during their tenancy and did not cause any damage to it. The Tenants stated that the desk chair and the curtain were damaged at the start of the tenancy.

The parties agreed that no move in condition inspection report was completed at the start of the tenancy. The parties agreed that a move out condition inspection report was completed at the end of tenancy.

The Landlord is claiming \$650.00 in relation to his peace and tranquillity being impacted while he was away on a trip. The Landlord stated that he is seeking compensation from the Tenants for having to prepare and respond to a dispute resolution application made by the Tenants while he was on vacation. The Landlord is claiming \$65.00 for 10 days. The Tenants stated that they were also required to spend the same amount of time preparing for the hearing.

Lastly, the Landlord is seeking \$2,500.00 in relation to property management fees. The Landlord stated that he received a quote from an individual who would assist the Landlord with his dispute resolution hearings. The Landlord stated that he did not employ this individual, however, is seeking the costs that he would have been charged as the Landlord chose to do the work himself. The Tenants responded by stating that they completely disagree with this claim.

### The Tenants' Claims

The Tenants are seeking the return of double their security deposit and pet deposits in the amount of \$3,000.00 as the Landlord has not yet returned their deposits. The parties agreed that the Tenants paid a security deposit in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00 which the Landlord continues to hold. The tenancy ended on April 30, 2019 and the Tenants provided the Landlord with their forwarding address by registered mail on April 25, 2019. The Landlord confirmed receipt.

The Tenants are claiming \$100.00 in recovery of the filing fee paid to make the Tenants' Application.

### 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.

The Landlord is claiming \$426.63 in relation to unpaid Hydro bills between the dates of Jan 22 to March 21, 2019, and from March 22 to April 30 2019. The Landlord is also claiming \$309.90 for unpaid water bills between March 1 and April 30, 2019. I accept that the parties agreed that the Tenants were required to pay 50% of the bills during their tenancy. The Tenants' submitted a copy of the e transfer history report which indicated that the Tenants paid their share of the bills to the Landlord on April 3, and again on May 15, 2019. In this case, I find it more likely than not that the Tenants paid the remaining balance of the outstanding bills owed to the Landlord. As such, I dismiss the Landlord's claim for unpaid utilities without leave to reapply.

The Landlord stated he spent three hours trying to repair the stove himself and is claiming to be compensated \$45.00 for each hour spent fixing the stove, in the amount of \$135.00. The Landlord is also claiming \$40.00 for the parts needed to make the repairs to the stove. In response, the Tenants stated that the stove worked fine during their tenancy and that they set the over to a clean cycle at the end of their tenancy, which would explain why the door was unable to open for some time.

The Landlord is seeking \$200.00 for damage to a barbeque that the Landlord stating was left uncovered by the Tenants', causing it to rust. The Landlord is claiming \$75.00 for damage caused by the Tenants to a desk chair as well as \$25.00 in relation to a torn curtain. The Tenants stated that they did not use the Landlord's barbeque during their tenancy and did not cause any damage to it. The Tenants stated that the desk chair and the curtain were damaged at the start of the tenancy.

The parties agreed that no move in condition inspection report was completed at the start of the tenancy. The parties agreed that a move out condition inspection report was completed at the end of tenancy.

Section 23 and 35 of the Act directs a Landlord and Tenants to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenants at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the Regulations. Both parties must sign the condition inspection reports and the Landlord must give the Tenants a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenants if the Landlord has offered two opportunities for both the beginning

and end of tenancy inspections and the Tenant does not participate on either of the occasions.

In this case, I accept that a condition inspection was not completed at the start of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate what the condition of the stove, barbeque, desk chair, and curtain were at the start of the tenancy, compared to the condition of the items at the end of the tenancy. In light of the above, I dismiss the Landlord's claims for the damaged items without leave to reapply.

The Landlord is claiming \$650.00 in relation to his peace and tranquillity being impacted while he was away on a trip as a result of the Tenant making an application for dispute resolution. The Landlord is also seeking \$2,500.00 in relation to property management fees. I find that the Landlord has certain responsibilities and obligations which come along with conducting a business of a Landlord. I find that the Landlord could have appointed an agent to act on his behalf while he was away on a vacation. Furthermore, I find that the Landlord is not entitled to recover property management fees in relation to have to fulfill his duties of being a Landlord. These costs are not recoverable by the Landlord; therefore, the Landlord's claims are dismissed without leave to reapply.

As the Landlord was not successful with his Application, I find that the Landlord is not entitled to the return of the filing fee.

### Tenants' Claim

With respect to the Tenants' claim for \$3,000.00 for recovery of double their security deposit, section 38(1) of the *Act* requires a Landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a Tenants' forwarding address in writing or the end of the tenancy, whichever is later. If a Landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the Tenants are entitled to receive double the amount of the deposits.

In this case, I find that the Landlord submitted his Application on May 12, 2019 which is within the 15 days permitted under the *Act* following the end the tenancy on April 30, 2019. As such, I find that the Tenants are not entitled to double the return of their security deposit.

As the Landlord was not successful with his Application, I find that the Tenants are entitled the return of the security and pet deposits in the amount of \$1,500.00. As the Tenants were successful in their Application, I find that they are entitled to the return of the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,600.00.

### Conclusion

The Landlord's Application is dismissed without leave to reapply. The Tenants are entitled to the return of their security and pet damage deposits as well as the recovery of the filing fee. Pursuant to section 67 of the Act, the Tenants are granted a monetary order in the amount of \$1,600.00. The monetary order must be served on the Landlord and 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: July 17, 2019

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Residential Tenancy Branch