



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT  
COMMISSION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDL, MNRL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution in which the Landlord sought monetary compensation from the Tenant for unpaid rent and painting of the rental unit as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on October 1, 2019. Only the Landlord's representative, B.R. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:52 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's representative and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. B.R. testified that they served the Tenant with the Notice of Hearing and the Application on June 22, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 27, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

B.R. confirmed her email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

### Background and Evidence

B.R. testified on behalf of the Landlord as follows. She confirmed that the tenancy began March 4, 2016. Rent was payable in the amount of \$495.00 per month.

B.R. further testified that at the time the tenancy ended the sum of \$9.00 was outstanding for rent. She also testified the Landlord incurred the cost of \$400.00 to have the rental unit painted. These amounts were detailed in a letter to the Tenant dated March 19, 2019 a copy of which was provided in evidence.

In support of the claim for compensation for painting the Landlord submitted a copy of the move in and move out condition inspection report as well as photos of the rental unit both of which confirmed the need for painting at the end of the tenancy. Notably the

Tenant confirmed the condition of the rental unit when she signed off on the move out condition inspection.

B.R. also confirmed that since the Landlord filed the application the Tenant paid \$309.00 towards the \$409.00 claimed such that \$100.00 remained outstanding.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's evidence that the Tenant owed \$9.00 in rent at the end of the tenancy. Pursuant to section 26 of the *Act* a tenant must pay rent when rent is due; as such I find the Landlord is entitled to recover this sum.

I also accept the Landlord's evidence that the rental unit required painting at the end of the tenancy. I am persuaded by the Landlord's representative's testimony, the photos submitted in evidence as well as the move out condition inspection report all of which support the Landlord's claim in this regard.

I accept the Landlord's evidence that the Tenant paid the sum of \$309.00 since the filing of the application such that the sum of \$100.00 remains owing.

As the Landlord has been successful in their application I grant the Landlord recovery of the \$100.00 filing fee pursuant to section 72 of the *Act* for a total award of **\$200.00**.

Conclusion

The Landlord is granted a Monetary Order in the amount of **\$200.00** representing the amount outstanding for unpaid rent and painting of the rental unit as well as recovery of the filing fee. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: October 09, 2019

---

Residential Tenancy Branch