



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VILLAGE FA CANADA LTD  
PARTNERS and [tenant name suped to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue – Security deposit

At the outset of the hearing the landlord testified that he had originally collected a \$2000.00 security deposit from the tenant but that was applied to some repairs during the first two years of the tenancy and that when the tenants renewed their agreement in 2015 he did not collect another deposit, accordingly; I dismiss the landlords claim for the security deposit as there is no deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as compensation for loss and damages as a result of this tenancy?

Is the landlord entitled to the recovery of the filing fee from the tenants for this application?

Background and Evidence

The landlord testified that the tenants began renting the home on February 1, 2013 and moved out on August 1, 2017. The landlord testified that the rent was \$4250.00 per month due on the first of the month to rent a 4800 square foot home. The landlord testified that neither a move in or move out written condition report was done. The landlord testified that the tenants left the unit severely damaged requiring him to do extensive renovations and repairs to the unit. The landlord testified that he, his son and two students that he hired did much of the work to keep costs down.

The landlord testified that he has incurred a loss of over \$60,000.00 but prefers to address the matter through the Branch to avoid a costly trial at the Supreme Court level. The landlord testified that the unit required so much work that he was unable to rent it for three months until October 1, 2017. The landlord testified that his paper work is proof of the damage done by the tenants. The landlord seeks \$12,750.00 in loss of rent for August – October 2017 and \$22,144.37 for repairs and replacement of items in the unit.

Counsel for the tenants made the following submissions. Counsel submits that the unit was an old and tired home that was in dire need of a renovation when the tenants moved in. Counsel submits that as the tenant is a large company that hires foreign workers and houses them, they have a very high standard of monthly inspections of the unit; those inspections result in the company maintaining and reporting any issues to the landlord. Counsel submits that the landlord was not very good at maintaining the home which was one of the primary reasons for the company to end their tenancy. Counsel submits that many of the receipts the landlord submitted were months after the tenancy ended. Counsel submits that the landlord has not proven on a balance of probabilities that his client is responsible for the damages and that his claim should be dismissed in its entirety.

## Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below. It is worth noting that the landlord was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing. Much of his claim lack clarity or logic. The landlord presented his evidence in a very disjointed and vague fashion. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to his monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

### **3.7 Evidence must be organized, clear and legible**

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In addition to the above, I have considered the following.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Repairs - \$22,144.97 & Loss of Rental Income \$12,750.00

The landlord stated that he conducted work for three months after the tenants moved out and re-rented the unit for October 1, 2017. This testimony was problematic for the following reasons. If the landlord had rented the unit for October 1, 2017 then his unit was only vacant for two months. In addition, if I am to accept that the landlord rented the unit for October 1, 2017, it raises further questions. The landlord submitted a lengthy repair list too voluminous to reproduce in this decision. The vast majority of the landlord's receipts for those repairs are dated after October 1, 2017 all the way into the summer of 2018. These receipts do not align with the landlords claim that he did all the work prior to re-renting it for October 1, 2017.

Furthermore, the photos submitted by the landlord were of a very poor quality; they were not date stamped, they were unclear and overexposed, I did not find them helpful. Finally, without the condition inspection report or any other supporting documentation from the outset of the tenancy, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support any portion of his claim and I therefore dismiss his application in its entirety. For absolute clarity, the landlord was unable to provide sufficient evidence that the tenants caused the damage as alleged, as well; his documentation was contradictory, and I did not find his testimony compelling as it was often illogical and unclear.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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 24, 2019

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Residential Tenancy Branch