



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFL, MNDCL-S, MNDL-S MNRL-S  
                                 FFT, MNSD

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on June 14, 2019, the Landlord requested \$4,895.86 in monetary compensation from the Tenants for unpaid rent, loss of rent, damage and cleaning of the rental unit and to recover the filing fee. In the Tenants' Application for Dispute Resolution, filed on July 24, 2019, the Tenants requested return of double their security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on September 30, 2019 and continued on November 4, 2019.

Both parties called into the hearing on September 30, 2019 and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenants were also assisted by two legal advocates, K.S. and D.D.

When the hearing reconvened on November 4, 2019 only the Landlord called in. The line remained open until 9:46 a.m. and the only participant who called into the hearing during this time was the Landlord. 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 and I were the only ones who had called into the teleconference on November 4, 2019.

### Preliminary Matter—Tenants' Application

The Tenants failed to call into the continuation of the hearing. In addition, they did not present any testimony or submissions with respect to their claim during the original hearing on September 30, 2019.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

**Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

**Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenants did not call into the reconvened hearing, and the Landlord appeared and was ready to proceed, I dismiss the Tenants' claim without leave to reapply.

I also decline to consider the Tenants' documentary and digital evidence filed in response to the Landlord's claim and in support of the Tenants' claim. I accept the Landlord's testimony (which she gave on September 30, 2019 in the presence of the Tenants and their advocates) that the Tenants' digital evidence was provide to her on an unmarked USB stick, without any details of the contents. As such, even in the event the Tenants had attended the hearing, I would not have considered this evidence pursuant to *Rule 3.10.1* which provides as follows;

**3.10.1 Description and labelling of digital evidence**

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.

A party submitting digital evidence must:

- include with the digital evidence:
  - o a description of the evidence;
  - o identification of photographs, such as a logical number system and description;
  - o a description of the contents of each digital file;
  - o a time code for the key point in each audio or video recording; and
  - o a statement as to the significance of each digital file;
- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and

- serve the digital evidence on each respondent in accordance with 3.10.4.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

The parties confirmed their email addresses during the September 30, 2019 hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence were written submissions provided by the Landlord in which she indicated that the tenancy began June 18, 2017 and continued on May 1, 2018 for a further year until April 30, 2018. The monthly rent was \$1,550.00 and the Tenants paid a \$775.00 security deposit.

The Landlord submitted that monthly rent for a comparable unit was between \$1,800.00 to \$3,000.00 as the unit was fully furnished with high end furnishings. She further submitted that they accepted the Tenants out of numerous applicants as she believed the Tenants would care for the home and her furnishings. The Landlord also noted that the only reason the unit was rented out was because her daughter and granddaughter had moved up north and would be returning in 1-2 years; as the subject Tenants only wanted to rent for a similar period of time, she believed they would be perfect Tenants.

The Landlord also writes that the Tenant gave notice during March of 2019 that they would be moving from the rental unit on April 30, 2019. She further noted that the Tenants did not in fact move out until May 8, 2019. She claimed compensation for a full month's rent in the amount of **\$1,550.00** due to the timing of the Tenants' notice to end their tenancy as well as the condition of the rental.

The Landlord stated that she was hoping her granddaughter could move into the rental unit on May 1, 2019, but because of the condition of the rental unit her granddaughter did not move in until May 15, 2019. The Landlord confirmed that her granddaughter pays \$1,548.00 in rent plus utilities. The Landlord also testified that due to the condition of the yard, she did not charge her granddaughter rent for the month of May 2019.

The Landlord also sought the sum of **\$600.00**, representing \$50.00 per month the Tenants underpaid rent during their second year of tenancy. The Landlord testified that she offered the Tenants a "rebate" of \$50.00 per month if the rental unit was clean at the end of the tenancy. She stated that the Tenants seemed to misunderstand her and instead deducted \$50.00 per month from their rent payment. She stated that she did not raise this as an issue with the Tenants as she knew she had their security deposit and would be able to recover the funds once the tenancy ended.

The Landlord also claimed the sum of **\$400.00** representing the amount she claims her granddaughter lost due to not being able to move into the rental unit on May 1, 2019.

The Landlord also claimed the cost of removing a combination lock from one of the trees on the rental property.

The Landlord also sought compensation for the cost to clean and repair the rental unit. The Move out Condition Inspection Report filed in evidence confirms the rental unit was left damaged and not cleaned. The Landlord also filed a Monetary Orders worksheet in which she detailed her monetary claim for cleaning and repairs as follows:

Estimated cost to clean and repair yard	\$600.00
Estimated cost to repair damage to Landlord's 6-piece bedroom suite	\$575.00
Cost to clean rental unit	\$333.75
Estimated cost to repair damage to bathroom	\$150.00
Estimated cost to repair damage to dining room table	\$100.00
Estimated cost to clean leather hide-a-bed sofa and recliner	\$100.00
Estimated cost to repair chipped kitchen tiles	\$150.00
Estimated cost to replace the water hose and nozzle	\$90.00
Estimated cost to repair damage to bedroom nightstand	\$75.00
Cleaning supplies	\$125.00
<b>TOTAL</b>	<b>\$2,298.75</b>

In support of the above claims the Landlord provided in evidence a receipt from the cleaner in the amount of \$335.75 at \$15.00 per hour. The Landlord also provided in evidence a copy of the receipt for paper towel in the amount of \$7.83 and \$16.77 for the cost of gloves and a twist mop. The Landlord also noted that she used approximately \$100.00 of her own cleaning supplies to

clean the rental unit. A photo submitted by the Landlord showed the volume of cleaning supplies used by the Landlord.

In addition, the Landlord provided in evidence numerous close up photos of the damage caused by the Tenants. In contrast she also provided photos of the rental unit and furnishings prior to the tenancy beginning which confirmed these items were not damaged at that time.

When the hearing reconvened, the Landlord indicated that she was prepared to call the cleaner as a witness. As the Tenants failed to call into the continuation of the hearing, such that the Landlord's testimony and documentary evidence was undisputed, I advised the Landlord I did not need to hear from her witness.

### 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.

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 testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's testimony that although the Tenants gave notice to end their tenancy effective April 30, 2019, the Tenants failed to move from the rental unit until after the first week of May 2019, thereby overholding their tenancy, and causing the Landlord to lose a month's rent. I find she is entitled to compensation from the Tenants for the **\$1,550.00** claimed for loss of rent. I also accept her evidence that although her granddaughter moved in on May 15, she did not charge her rent due to the condition of the yard; photos submitted by the Landlord support the position taken by the Landlord in this respect.

I also accept the Landlord's undisputed evidence that the Tenants underpaid their rent by \$50.00 over the course of a year, such that the sum of **\$600.00** is outstanding. I find she is entitled to recover those funds.

As I informed the Landlord during the hearing, her granddaughters' losses of \$400.00 (apparently related to a security deposit she paid elsewhere) are not recoverable from the Tenants as the granddaughter is not a party to this dispute. I note as well that the Landlord's granddaughter was given free rent from May 15-31, 2019, such that she has already receive compensation for the inconvenience of not being able to move in on May 1, 2019 as planned as well as the condition of the yard.

I accept the Landlord's evidence that the Tenants left a lock on one of the trees on the rental property and that she expects to incur the cost of **\$100.00** to have it removed. I find this is also recoverable from the Tenants.

The photos submitted by the Landlord confirm that the rental unit required cleaning at the end of the tenancy. I therefore award the Landlord the **\$335.75** claimed for the cost of the cleaner, as well as the **\$124.60** claimed for cleaning supplies.

The evidence confirms that this rental unit was fully furnished with the Landlord's belongings. The Landlord provided numerous photos of the furniture prior to the tenancy beginning confirming that this furniture was high end and undamaged. I am persuaded by the Landlord's evidence that the Tenants damaged the Landlord's furniture as well as various areas in the rental unit, including the outdoor areas; I note that all of the Landlord's claims are meticulously supported by photographic evidence. I accept the Landlord's testimony that she has not been in a financial position to pay for most of the repairs to the rental unit and her furniture and requires compensation from the Tenants in order to attend to these repairs. While she has not yet incurred these costs, I am satisfied by the estimates provided in evidence that these amounts are required to compensate her for the damage, and to facilitate the required repairs. I therefore find she is entitled to recover the amounts claimed for these estimated costs.

As the Landlord has been substantially successful in her application, I also find she is entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$4,548.75** for the following:

loss of May 2019 rent	\$1,550.00
Unpaid rent (\$50.00 per month for 12 months)	\$600.00
Cost to clean rental unit	\$333.75
Cleaning supplies	\$125.00
Estimated cost to clean and repair yard	\$600.00
Estimate to repair damage to Landlord's 6-piece bedroom suite	\$575.00
Estimated cost to repair damage to bathroom	\$150.00
Estimated cost to repair damage to dining room table	\$100.00
Estimated cost to clean leather hide-a-bed sofa and recliner	\$100.00
Estimated cost to repair chipped kitchen tiles	\$150.00
Estimated cost to replace the water hose and nozzle	\$90.00
Estimated cost to repair damage to bedroom nightstand	\$75.00
Filing fee	\$100.0
<b>TOTAL</b>	<b>\$4,548.75</b>

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenants' \$775.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,773.75**. This Order must be served on the

Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that court.

The Tenants' claim is dismissed 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: November 14, 2019

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Residential Tenancy Branch