



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT (tenant);  
FFL, MNRL-S, MNDL-S, MNDCL-S (landlord)

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord and lawyer MS attended the hearing ("the landlord"). The tenants did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 33 minutes to allow the tenants the opportunity to call. The

teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided an opportunity to ask questions.

The landlord provided affirmed testimony supported by the filed affidavit of a process server that the tenants were personally served with the Notice of Hearing and Application for Dispute Resolution on May 28, 2020. I find the tenants were served on that day under the Act.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

At the outset, the landlord corrected the landlord's name to conform with the tenancy agreement, a copy of which was submitted. Accordingly, the landlord's name is amended throughout.

#### Issue(s) to be Decided

Are the tenants entitled to the following?

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Is the landlord entitled to the following?

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord provided the following uncontradicted testimony as the tenants did not attend the hearing. The tenancy began on November 1, 2019 for monthly rent of \$2,800.00 payable on the first of the month. The tenant provided a security deposit of \$1,400.00 and a pet deposit of \$1,400.00 (together \$2,800 and referred to as “the deposit”) which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord testified that the tenants vacated the unit on May 1, 2020 and did not pay rent for the month of April 2020.

The landlord testified that no condition inspection was conducted on moving in or moving out.

The landlord stated that when the tenants vacated, the tenants left furniture and personal items in the unit. The landlord requested the tenants to remove these items which the tenants did not do. The landlord hired a packing and moving company and incurred an expense of \$1,211.10 to pack and move the items the tenants left behind; a copy of the receipt was submitted.

The landlord testified that the landlord has paid storage fees for May and June 2020 in the amount of \$440.00 for the tenants’ possessions. A copy of the receipt was submitted.

The landlord testified that when the tenants vacated, the door was damaged, and she incurred an expense of \$378.00 for repairs; a copy of the receipt was submitted.

The landlord testified that the unit required cleaning when the tenants vacated, and the landlord incurred a cleaning expense of \$300.000. The landlord stated she overlooked uploading a copy of the receipt, the amount of which was not clarified during the hearing. The landlord testified that the \$300.00 was the approximate amount of the expense.

The landlord testified that the tenants left considerable garbage and debris at the unit.

She estimated that when the State of Emergency is ended, the landlord will incur \$120.00 in disposal fees.

The landlord submitted photographs showing the condition of the house when the tenants vacated as well as the garbage/debris; these photographs support the landlord's testimony.

The tenants provided their forwarding address to the landlord on April 17 and May 6, 2020. The landlord filed her application on May 14, 2020.

The landlord clarified her claim as follows:

ITEM	AMOUNT
Outstanding rent	\$2,800.00
Moving costs	\$1,211.10
Storage fees	\$440.00
Repairs	\$378.00
Cleaning	\$300.00
Disposal fees	\$120.00
<b>TOTAL CLAIM</b>	<b>\$5,249.10</b>

The tenants did not attend the hearing and submitted no evidence in support of their application for a return of the deposit or in reply to the landlord's claims.

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total Award Requested (above)	\$5,249.10
Reimbursement filing fee	\$100.00
(Deposit)	(\$2,800.00)
<b>TOTAL Monetary Order Requested</b>	<b>\$2,549.10</b>

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

. . .

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

- 1. Did the tenants fail to comply with Act, regulations, or tenancy agreement?*

### *Landlord's Claim for Rent*

Generally speaking, rent must be paid in full and on time.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act and the agreement, unless the tenant has a right to deduct all or part of the rent.

The section states:

### ***Rules about payment and non-payment of rent***

**26(1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord's testimony was supported in all material aspects by documentary evidence.

I find the landlord has met the burden of proof that the tenants did not pay rent for the last month of the tenancy, April 2019 in breach of the Act.

#### *Landlord's Other claims*

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the photographs, I find the tenants failed in the tenants' obligation under section 37(2) with respect to cleaning, repairs and removal of possessions. I find that the tenant left personal possessions in the unit which had to be moved and stored. I find they left garbage that will have to be disposed off. I find they left the unit damaged and that it required cleaning as described by the landlord.

I have considered the photographs and receipts submitted by the landlord and I find the landlord has met the burden of proof that the tenants breached their obligation under section 37(2).

#### *2. Did the loss or damage result from non-compliance?*

Having found that the tenants breached the Act, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is “no,” the respondent’s breach of the Act is a cause-in-fact of the loss or damage.

If the answer is “yes,” indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

*Landlord’s claim for outstanding rent*

Based on the landlord’s testimony, I find the tenants failed to pay rent for the last month of their tenancy and did not comply with the Act. As a result, I find that the landlord has incurred the loss of rent for which compensation is requested.

*Landlord’s other claims*

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the invoices and the photographs, I find the tenant failed in the tenant’s obligation under section 37(2) and the Guideline with respect to removal of their possessions, cleaning and repairs.

I find that the landlord would not have incurred the expenses claimed for moving, storage, repairs, cleaning and garbage disposal but for the tenants’ breach of their obligations.

*3, Has applicant proven amount or value of damage or loss?*

I find the landlord has met the burden of proof that the monthly rent was \$1,800.00 and the landlord incurred a loss in this amount.

Although the landlord did not submit receipts for cleaning and garbage disposal, I have viewed the photographs and accept the landlord’s testimony that these are reasonable expenses in the circumstances.

Considering the above reasonable estimation and the invoices submitted, I find the landlord has met the burden of proof with respect to the amount of value of the damage or loss claimed.

*4. Has applicant done whatever is reasonable to minimize damage or loss?*

The landlord submitted emails to the tenants at the time they were moving out, requesting that they clean the unit and take their possessions away. The tenants did not do so.

In considering the landlord's testimony, I find that she took reasonable steps to minimize the damage or loss by moving and storing the tenants' possessions, by carrying out the cleaning and repairs, and by anticipating a garbage disposal expense at the end of the State of Emergency. I find the landlord made reasonable efforts to have these matters attended to in a cost and time efficient manner.

### *Conclusion*

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$2,800.00
Moving costs	\$1,211.10
Storage fees	\$440.00
Repairs	\$378.00
Cleaning	\$300.00
Disposal fees	\$120.00
<b>TOTAL AWARD</b>	<b>\$5,249.10</b>

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order of **\$2,018.00** as follows:

ITEM	AMOUNT
Total Award	<b>\$5,249.10</b>
Reimbursement filing fee	<b>\$100.00</b>



(Security deposit)	(\$2,800.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$2,549.10</b>

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$2,549.10**, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: June 15, 2020

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Residential Tenancy Branch