



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOL53A Investment  
Corporation and [tenant name suppressed to  
protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 5, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- a monetary order for unpaid rent;
- an order granting recovery of the filing fee; and
- to retain the security deposit.

M.P. attended the hearing on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. M.P. testified that he served the Executor of the Tenant's Estate with the Application package and documentary evidence on March 17, 2020 by Registered Mail. M.P. stated that the Executor for the Tenant's estate provided a forwarding address on February 17, 2020. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. As such, I find that the Executor of the Tenant's Estate is deemed to have been served with the above mentioned documents on March 22, 2020.

M.P. was 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 Residential Tenancy Branch 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, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

M.P. testified that the tenancy began on July 1, 2019. Rent in the amount of \$1,500.00 was due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit and a pet damage deposit, both in the amount of \$750.00 which the Landlord currently holds. A tenancy agreement between the parties was submitted by the Landlord in support.

M.P. testified that the Tenant passed away sometime in late January 2020. M.P. stated that the he connected with the Executor of the Tenant's Estate to conduct a move out inspection of the Tenant's rental unit on February 17, 2020. M.P. stated that the rental unit required seven hours of cleaning, as well as some repairs to the walls, and painting. The Landlord is seeking compensation in the amount \$300.00. The Landlord provided a copy of the condition inspection report, as well as photographic evidence in support.

M.P. stated that the fob to the rental unit as well as a the remote to the fan were not returned at the end of the tenancy. M.P. stated that the cost to replace the fob was \$125.00, as well as \$70.00 to replace the fan remote.

Lastly, the Landlord is claiming \$982.68 for the loss of rent between February 1 to 20, 2020 at which point the Landlord had vacant possession of the rental unit which was clean and ready to re-rent. If successful, the Landlord is also seeking the return of the filing fee paid to make the 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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenant. 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.

I accept that M.P and the Executor of the Tenant's Estate conducted a move out inspection on February 17, 2020 where it was determined that the rental unit required further cleaning and repairs. As such, I find that the Landlord is entitled to compensation in the amount of \$300.00

M.P. stated that the fob to the rental unit, as well as a the remote to the fan, were not returned at the end of the tenancy. M.P. stated that the cost to replace the fob was \$125.00, as well as \$70.00 to replace the fan remote. I find that the Landlord is entitled to compensation in the amount of \$195.00 for replacement costs.

Lastly, the Landlord is claiming \$982.68 for the loss of rent between February 1 to 20, 2020 at which point the Landlord had vacant possession of the rental unit which was clean and ready to re-rent. If successful, the Landlord is also seeking the return of the filing fee paid to make the Application. Section 26(1) of the *Act* confirms: 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.

I accept that the Landlord did not gain vacant possession of the rental unit until February 20, 2020. As such, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$982.68. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security and pet damage deposits held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$77.68, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Cleaning/Repairs:	\$300.00
Fob/Remote Replacement:	\$195.00
Unpaid Rent:	\$982.68
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$1,500.00</i> )
<b>TOTAL:</b>	<b>\$77.68</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$77.68. This order must be served on the Tenant's Estate as soon as possible. If the Tenant's Estate fails to comply the monetary order it 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 13, 2020

---

Residential Tenancy Branch