



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord:    MNDC   MNR   MNSD   FF  
                                 Tenants:    MNDC   MNSD   FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on May 24, 2020 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order allowing them to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on June 13, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing and were assisted with interpretation by S.L., who spoke for the Landlords throughout most of the hearing. The Tenants attended the hearing. The Landlords and the Tenants provided affirmed testimony.

The Landlords testified the Landlords' Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail. The Tenants acknowledged receipt. In addition, the Tenants testified the Tenants' Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail. The Landlords acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the 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 Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to an order allowing them to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim?
4. Are the Landlords entitled to an order granting recovery of the filing fee?
5. Are the Tenants entitled to monetary order for money owed or compensation for damage or loss?
6. Are the Tenants entitled to an order granting recovery of the filing fee?
7. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the Tenants first moved into the rental unit as guests of the previous tenant in 2018. However, on March 1, 2019, the parties entered into a written tenancy agreement. The parties entered into a further fixed-term tenancy agreement that began on January 1, 2020 and was expected to continue to June 30, 2020. The Tenants testified they gave the Landlords notice of their intention to move out on March 23, 2020 and vacated the rental unit on April 24, 2020. However, the Landlords testified they did not receive notice to end the tenancy and that the Tenants did not vacate the rental unit until May 21, 2020, at which time the move-out condition inspection was completed.

During the tenancy, rent in the amount of \$1,690.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$825.00, which the Landlords hold.

### The Landlords' Claim

The Landlords' claim for \$2,040.00 was summarized in the Landlords' Application and in a Monetary Order Worksheet dated June 17, 2020.

The Landlords relied on a Condition Inspection Report, a copy of which was submitted into evidence. The move-in condition inspection was completed with the previous tenant on March 1, 2018 before the tenancy began. The move-out condition inspection was completed on May 21, 2020 and was not signed by the Tenants.

First, the Landlords claimed \$226.80 for cleaning services. In support, the Landlords submitted photographs of the rental unit at the end of the tenancy. The photos depicted a stove top and oven, walls, floors, and light switches. The Landlords testified the rental unit was not "move-in ready". The Landlords also submitted an invoice dated May 27, 2020 in the amount claimed.

In reply, the Tenants testified the unit was cleaned by D.Y. at the end of the tenancy. The fridge, cupboard, drawers, and microwave were specifically referenced. Photographs depicting the vacant rental unit were submitted in support.

Second, the Landlords claimed \$14.64 for missing closet hanger bars. In support, the Landlords submitted photographs depicting missing bars in a bedroom closet. The Landlords also submitted an invoice in the amount claimed.

In reply, the Tenants testified the closet hanger bars were never present in the rental unit.

Third, the Landlords claimed \$31.75 for broken light bulbs. In support, the Landlords submitted photographs depicting missing or burned out lightbulbs in the living room, kitchen, and a bedroom. The Landlords also submitted a receipt from The Home Depot. The Landlords testified they have only claimed for lightbulbs used.

In reply, the Tenants testified that replacement of light bulbs was not part of the tenancy agreement. The Tenants also testified that G.L. told them he would take care of replacing lightbulbs, which was denied.

Fourth, the Landlords claimed \$20.13 for a missing baking plate. The Landlords testified that it was the kind of baking plate that comes with an oven. In support, the Landlords submitted a receipt from Walmart in the amount claimed.

In reply, the tenants testified they were uncertain about what item the Landlords were claiming for but testified they have never seen the item described in the testimony.

Fifth, the Landlords claimed \$1,690.00 for unpaid rent due on May 1, 2020. In support, the Landlords submitted a copy of correspondence from their bank dated May 5, 2020 advising that the cheque was “returned unpaid.” The Landlords also submitted a copy of a text message to the Tenants dated May 6, 2020 in which the Landlords advised that the rent check was rejected. The text message on that date also asks the Tenants if they were still living in the rental unit.

In reply, the Tenants acknowledged rent was not paid as alleged. However, the Tenants testified they were justified in withholding rent because of the Landlords’ invasion of their privacy, harassment, and loss of quiet enjoyment. The Tenants testified the Landlords sent text messages asking them Tenants to move their car, to check on a smoke detector going off in the rental unit, and to request that the Tenants turn the volume down on their music. In addition, the Tenants testified that the Landlords were putting their yard above the safety of the Tenants’ children when they advised the Tenants that they intended to use a pesticide on the yard during maintenance. The Tenants objected to the Landlords gardening during the Covid-19 crisis and suggested it was “not acceptable”. The Tenants also testified that the Landlords spied on them through the blinds of a vacant suite and using a security camera. Further, the Tenants testified the Landlords yelled at them. In response, the Landlords testified that none of these concerns were raised as an issue until the payment of rent became an issue. The Landlords also testified they tried to talk with the Tenants about the payment of rent, but the Tenants became hostile towards them.

Finally, the Landlords claimed \$100.00 in recovery of the filing fee.

#### The Tenants’ Claim

The Tenants’ claim for \$22,711.60 was summarized in the Tenants’ Application. First, the Tenants claimed reimbursement of rent paid on April 1, 2020 for loss of quiet enjoyment. The Tenants relied on the evidence provided above in response to the Landlords’ claim for unpaid rent due on May 1, 2020.

In reply, the Landlords testified the tenants lived in the rental unit and that rent was paid in accordance with the fixed-term tenancy agreement.

Second, the Tenants claimed \$10,000.00 for pain and suffering due to “acute stress, damage to mental and physical health (prolonged recovery) and loss of income from harassment, invasion of privacy and health/safety risks.” The Tenants testified that J.Y. was in a car accident and that dealing with the stress presented by the Landlords, described above, exacerbated her injuries and prolonged her recovery. J.Y. also advised that she is a survivor of historical sexual abuse. In addition, J.Y. testified that D.Y. had to take two months off work to take care of her and that she was laid off of work. The Tenants also testified that because of what was going on in their lives they had to send their children to school in June even though they would have preferred not to.

In reply, the Landlords testified they were not aware that J.Y. was in a car accident. The Landlords also testified that they never acted in a threatening or aggressive way towards the Tenants.

Third, the Tenants claimed \$385.35 for moving fees. The Tenants testified that the living arrangement became intolerable and that they had to move. In support, the Tenants submitted what appears to be an emailed invoice in the amount claimed.

Fourth, the tenants claimed \$986.25 for storage rental for the months of April, May, and June 2020. The Tenants testified that they noticed moisture in the garage which was discussed during the tenancy. Photographs of the garage taken at the end of the tenancy were submitted in support. After the Tenants moved out of the rental unit, they observed mold on some of their belongings that had been stored in the garage. The Tenants testified they have not been able to move those belongings into their new home due to safety concerns as a result of the “microtoxins” present. In support, the Tenants submitted photographs depicting what they claim is mold in the garage, as well as photographs depicting stains on a golf bag and a car seat. The Tenants also submitted a storage rental agreement commencing April 9, 2020.

In reply to the Tenants' claims regarding moving and storage fees, the Landlords testified that the Tenants chose to leave. The Landlords also testified the Tenants were provided with a garage and an indoor storage space. The Landlords testified that the Tenants never raised an issue with respect to moisture or mold during the tenancy. The Landlords also denied they discussed a moisture issue in the garage. Rather, the Landlords testified they discussed a temperature issue in the garage because the Tenants own a piano and pianos are impacted by temperature.

Fifth, the Tenants claimed \$7,800.00 for "fungal remediation of belongings stored in garage with water ingress that caused mold growth". The Tenants' testimony was brief. The Tenants acknowledged they have not incurred this cost but testified they need to get it done because J.Y. is sensitive to "microtoxins". In support, the Tenants submitted an estimate for the amount claimed dated June 11, 2020.

In reply, the Landlords denied the presence of mold in the garage and testified they were not made aware of mold on the Tenants belongings until after the tenancy ended.

Sixth, the Tenants claimed \$1,650.000 for the return of double the amount of the security deposit. The Tenants testified they provided the Landlords with a forwarding address in writing in a letter dated May 21, 2020. The Tenants testified the letter was given to the Landlords in person on that date. A copy of the letter was submitted with the Landlords' evidence.

In reply, the Landlords acknowledged receipt of the Tenants' forwarding address on May 21, 2020. The Landlords acknowledged the security deposit has not been returned to the Tenants but noted the Landlords' Application was made on May 24, 2020.

Finally, the Tenants claimed \$100.00 in recovery of the filing fee.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

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*. 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 each of the parties 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 other party. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that each party did what was reasonable to minimize the damage or losses that were incurred.

#### The Landlords' Claim

With respect to the Landlords' claim for \$226.80 for cleaning services, I find there is insufficient evidence before me to grant the relief sought. Section 37(2) of the *Act* confirms a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. While I accept there were areas in the rental unit that remained unclean at the end of the tenancy, perfection is not required. A rental unit does not have to be left "move-in ready" at the end of a tenancy. I find that the rental unit was reasonably clean at the end of the tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$14.64 for missing hanger bars, I find there is insufficient evidence before me to grant the relief sought. Although the Landlords provided photographic evidence to show the absence of hanger bars, the Tenants denied they were there at the beginning of the tenancy. In addition, the move-in condition inspection relied on by the Landlords was completed with the previous tenant and I place little weight upon it. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$31.75 for broken light bulbs, I find there is sufficient evidence before me to grant the relief sought. Policy Guideline #1 confirms that tenants are responsible for placing light bulbs in his or her premises during the tenancy. I am satisfied that the Tenants did not replace missing or burned out light bulbs during the tenancy, and that the amount claimed is reasonable in the circumstances as the Landlords only claimed for the bulbs that were replaced. The Landlords have demonstrated an entitlement to a monetary award in the amount of \$31.75.

With respect to the Landlords' claim for \$20.13 for a missing baking plate, I find there is insufficient evidence before me to grant the relief sought. Although the Landlords produced a receipt for this expense, the Tenants did not appear to know what was being referred to and denied removing it from the rental unit. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$1,690.00 for unpaid rent due on May 1, 2020, section 26(1) of the *Act* states:

*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.*

[Reproduced as written.]

I find there is sufficient evidence before me to grant the relief sought. The parties were subject to a fixed-term tenancy agreement that did not end until June 30, 2020. The Tenants provided testimony concerning a number of grievances with the Landlords which they suggested justified the withholding of rent. I disagree. The examples provided by the Tenants, described above, appear to have been the reasonable actions of a landlord who were concerned about the security and maintenance of the rental property and did not amount to an invasion of their privacy, harassment, or loss of quiet enjoyment. Moreover, I find they did not give rise to a right under the *Act* to deduct rent. Any of the grievance mentioned could have been addressed at dispute resolution proceedings. I find the Landlords have demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$1,690.00.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$1,721.75 (\$31.75 + \$1,690.00).



### The Tenants' Claim

With respect to the Tenants' claim for \$1,690.00 for reimbursement of rent paid on April 1, 2020 for loss of quiet enjoyment, I find there is insufficient evidence to grant the relief sought. The Tenants submitted a video in which J.Y. is heard telling the Landlords that the Tenants did not have to pay rent on April 1, 2020, or that the Landlords had an obligation not to deposit their rent cheque at the Tenants' request. This is incorrect. During the Covid-19 emergency, tenants have at all times been (and remain) obligated to pay rent. *Ministerial Order M089*, in effect from March 30 to June 23, 2020, merely prevented landlords from taking steps to end tenancies for unpaid rent. Further, for the reasons described above, I find the Tenants were obligated to pay rent when due under the terms of the tenancy agreement, and that the Tenants' grievances described in their testimony did not give rise to a right under the *Act* to be reimbursed for rent paid. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$10,000.00 for pain and suffering, loss of income, and invasion of privacy, I find there is insufficient evidence before me to grant the relief sought. The Tenants' testimony was brief. J.Y. testified with respect to historical sexual abuse and a motor vehicle injury, suggesting the Landlords' actions exacerbated her recovery. However, the Tenants referred to no documentary evidence to draw a link between the Landlords' actions and her apparently unrelated injuries. Further, I note my finding above in which I concluded the Landlords' actions appear to have been the reasonable actions of a landlord who was concerned about the security and maintenance of the rental property and did not amount to an invasion of their privacy, harassment, or loss of quiet enjoyment.

In addition, the Tenants testified they each lost time from work, attributing their loss to the Landlords. However, the Tenants provided no documentation in support of lost wages or of a link between the Landlords' actions and their alleged loss. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$385.35 for moving fees and \$986.25 for storage unit rental, I find there is insufficient evidence before me to grant the relief sought. I find the Tenants chose to end the tenancy early, before the end of the fixed term, rather than attempt to resolve their issues through dispute resolution. As a result, I find the Tenants are responsible to bear the costs of their decision. Concerning the Tenants' submission that storage is necessary because of the presence of mold on some of their belongings and that these items must remain in storage until the mold is remediated, I find there is insufficient evidence before me that the stains depicted in the images referred to are mold, that it presents a health risk, or that the Landlords are responsible. These aspects of the Tenants' claim are dismissed.

With respect to the Tenants' claim for \$7,800.00 for remediation of the Tenants' belongings, I find there is insufficient evidence before me to grant the relief sought. The Tenants acknowledged the cost has not been incurred. In addition, as noted above, I find there is insufficient evidence before me that the stains depicted in the images referred to are mold, that it presents a health risk to the Tenants, or that the Landlords are responsible. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$1,650.000 for the return of double the amount of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms a tenant is entitled to the return of double the amount of the deposits. In this case, I find that the Landlords applied for dispute resolution on May 24, 2020, three days after the Tenants' forwarding address in writing was received. I find the Tenants are not entitled to recover double the amount of the security deposit. This aspect of the Tenants' claim is dismissed.

In summary, the Tenants' claims are dismissed without leave.

Summary of Claims

The Landlords have demonstrated an entitlement to a monetary award in the amount of \$1,721.75. Having been successful, I find the Landlords are entitled to recover the filing fee paid to make the Landlords' Application. I also find it appropriate to order that the Landlords retain the security deposit held in partial satisfaction of the Landlords' claims. Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$996.75, which has been calculated as follows:

<b>Claims</b>	<b>Amount</b>
Monetary award:	\$1,721.75
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$825.00)
<b>TOTAL:</b>	<b>\$996.75</b>

The Tenants' Application is dismissed without leave to reapply.

Conclusion

The Landlords are granted a monetary order in the amount of \$996.75. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' Application 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: July 10, 2020

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Residential Tenancy Branch