



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCL-S, MNRL-S, FFL

### Introduction

In this dispute, the landlords sought compensation for various matters pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the “Act”).

The landlords filed an application for dispute resolution on April 10, 2020 and a dispute resolution hearing was held, by teleconference, on August 17, 2020. The landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenants did not attend.

The landlord (P.S.) testified that she served the Notice of Dispute Resolution Proceeding package on the tenants by leaving it “on the gate” through which the tenants would pass. She observed the tenant (B.M.) approach the gate, and at that time she said to him, “this is your mail.” The mail included the Notice of Dispute Resolution Proceeding package, along with some other mail unrelated to this dispute. The landlord then observed the tenant pick up the mail and enter the rental unit. This event occurred on April 17, 2020 at 7:52-7:53 PM.

Based on this undisputed testimony of the landlord I find that the tenants were served with the Notice of Dispute Resolution Proceeding package in compliance with sections 59(3) and 71(2)(b) of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

### Issues

1. Are the landlords entitled to a monetary award for unpaid rent?
2. Are the landlords entitled to a monetary award for damage to the rental unit?
3. Are the landlords entitled to recovery of the filing fee?

### Background and Evidence

The landlord confirmed that the tenancy started on December 13, 2019. The tenants no longer reside in the rental unit. Monthly rent was \$1,400.00 and the tenants paid a \$700.00 security deposit. A copy of the tenancy agreement was submitted in evidence.

Regarding the unpaid rent aspect of their application, the landlord gave evidence that the tenants did not pay rent for March, April, May and June 2020, for a total claim of \$5,600.00. Submitted into evidence were copies of text messages in which the tenants keep saying that they will be paying the arrears in rent, but they appear not to follow through.

Regarding the damage claim, the landlord testified that the tenants left the rental unit damaged and dirty. Several photographs of the rental unit were submitted into evidence, along with a condition checklist. There was significant cleaning involved and the flooring needed to be replaced. Various estimates and receipts were tendered into evidence by the landlords. The total claim for these is in the amount of \$3,708.87.

Finally, the landlords seek recovery of the filing fee of \$100.00, as it pertains to this specific application for dispute resolution.

### 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.

### **Claim for Unpaid Rent**

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission (primarily in the form of text conversations in which the tenants procrastinate and try to prolong their non-payment of rent) that the tenants did not pay rent when it was due, and did not pay rent for March through June, 2020, inclusive. There is no evidence before me that the tenants had any right under the Act to not pay the rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for unpaid rent in the amount of \$5,600.00.

### **Claim for Damages and Cleaning**

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the documentary – and especially the photographic – evidence shows that the tenants left the rental unit in a condition about the farthest possible distance from what might be considered “reasonably clean and undamaged.” The rental unit was, to put it mildly, filthy and wholly unclean. But for the tenants’ leaving the rental unit in the condition that it was, the landlords would not have incurred various costs and expenses. The amount was established through undisputed oral and documentary evidence, and the amounts are, I find, a reasonable amount claimed in these circumstances.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for \$3,708.87 in damages and related expenses to the rental unit caused by the tenants’ negligence.

### **Claim for Filing Fee**

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 landlords were successful in their application, I grant their claim for reimbursement of the \$100.00 filing fee.

### **Summary of Award, Retention of Security Deposit, and Monetary Order**

I award the landlords a total of \$9,408.87.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy is over, I authorize the landlords to retain the tenants’ security deposit of \$700.00 in partial satisfaction of the above-noted award.

A monetary order for the balance, \$8,708.87, is issued to the landlords, in conjunction with this Decision.

### **Conclusion**

I grant the landlords a monetary order in the amount of \$8,708.87, which must be served on the tenants. Should the tenants fail to pay the landlords the amount owed, the landlords may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 17, 2020

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Residential Tenancy Branch