



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

In this dispute, the landlords seek compensation against their former tenants pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The landlords filed an application for dispute resolution on May 22, 2020 and a dispute resolution hearing was held on September 24, 2020. The landlord’s agent (one of the landlords) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. Neither tenant attended.

The landlord testified that she served the Notice of Dispute Resolution Proceeding package by way of email to the email address that the tenant to whom the Notice of Dispute Resolution Proceeding was served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed, pursuant to the *Director’s Order* of March 30, 2020, which pertains to the service of documents under sections 88 and 89 of the Act. Based on the above I find that the tenants were served the Notice of Dispute Resolution Proceeding package in accordance with 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 issue of this application.

### Issue

Whether the landlords are entitled to some or all of the compensation as claimed, and, whether they may retain the tenants’ security deposit in full or partial satisfaction of any compensation that is awarded.

### Background and Evidence

Briefly, by way of background, the tenancy began on November 2, 2019 and ended on April 30, 2020. Monthly rent was \$1,280.00 and the tenants paid a security deposit of \$640.00, which the landlords currently hold in trust pending the outcome of this dispute.

A copy of the written Residential Tenancy Agreement was submitted into evidence.

In this application, the landlords seek the following compensation:

1. Unpaid rent for April 2020	\$1,280.00
2. Unpaid municipal utilities	359.27
3. Invoice for carpet shampooing	94.50
4. Invoice for cleaning	150.00
5. Cost of missing TELUS WIFI booster	120.00
6. Cost of missing TELUS TV box	250.00
<hr/> Total Amount Claimed:	<hr/> \$2,253.77

The landlord testified that the tenants did not pay rent for April 2020, they left the rental unit in an entirely unclean condition (several photographs were submitted into evidence to support her claim), and invoices for the cleaning were tendered into evidence.

In addition, the landlord testified that the tenants took with them a WIFI booster and a TV box unit, both of which cost a total of \$370.00. Invoices for this equipment was submitted in evidence.

The landlord testified gave evidence that the tenants did not pay their share of the municipal utilities are required by the tenancy agreement; copies of the utility bill were tendered into evidence.

Further, the landlord testified that a Condition Inspection Report was completed both at the start of and at the end of the tenancy; a copy of the report was submitted into evidence. The report reflected the condition of the rental unit.

Regarding the tenants' forwarding address, the landlord explained that the tenants never provided their forwarding address to her in writing. The method she had to contact them was their email address.

### 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.

### **Claim for Unpaid Rent and Unpaid Utilities**

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 that the tenants did not pay rent for April 2020. Further, there is no evidence before me that the tenants had a right under the Act to not pay the rent. In addition, the landlord's testimony and documentary evidence establishes that the tenants did not pay the utilities of \$359.27.

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 landlord has met the onus of proving her claim for unpaid rent in the amount of \$1,280.00 and for unpaid utilities in the amount of \$359.27.

### **Claim for Cleaning Costs & Missing TELUS Equipment**

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. This clause includes the condition and existence of property, such as a WIFI booster and TV box, that is included in the rental unit or which is provided to the tenant as a service or facility.

The landlord's testimony and documentary evidence, including the Condition Inspection Report and the photographs, lead me to find that the tenants did not leave the rental unit reasonably clean and undamaged. The amount of uncleanliness is not, I conclude, something that is attributable to reasonable wear and tear. And, the illegal removal of the WIFI booster and TV box result in the tenants to be liable for such loss.

The tenants breached section 37(2) of the Act; the landlords suffered a loss of \$614.50 from that breach. But for the tenants' breach, the landlords would not have incurred the amount claimed, and finally, the amounts are reasonable, I find.

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 \$614.50.

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

In summary, the landlord is awarded \$2,253.77.

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 had ended, I authorize the landlords to retain the tenants' security deposit of \$640.00 in partial satisfaction of the above-noted award.

The balance of the award is \$1,613.77, which is issued by way of a Monetary Order.

Conclusion

I HEREBY GRANT the landlords a monetary order in the amount of \$1,613.77, the order of 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 made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 24, 2020

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Residential Tenancy Branch