



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on May 31, 2020, wherein the Landlords requested monetary compensation from the Tenant in the amount of \$9,056.56, authority to retain her security deposit towards any amounts awarded, and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for teleconference at 1:30 p.m. on September 29, 2020. Only the Landlords called into the hearing. The Landlord, D.W., gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:56 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. D.W., testified that they initially served the Tenant by email sent June 2, 2020; however, as the Tenant did not acknowledge receipt of the email, they also served the Tenant with the Notice of Hearing and the Application on June 4, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Landlord advised that the package was signed for on June 8, 2020. I accept the Landlords' undisputed testimony in this regard, and I find the Tenant was duly served as of June 8, 2020 and I proceeded with the hearing in the Tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by D.W. and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed that this tenancy began June 1, 2017. Monthly rent was \$1,375.00 and the Tenant paid a security deposit in the amount of \$687.50.

In the hearing before me the Landlords sought monetary compensation for the following:

Cost to replace Garburator	\$383.86
Rug cleaning	\$247.70
Cost to serve the 10 Day Notice to End Tenancy on the Tenant	\$75.00
Unpaid rent November 2019, December 2019, January 2020, February 2020 and March 2020	\$6,875.00
Loss of rent for April 2020	\$1,375.00
<b>TOTAL CLAIMED</b>	<b>\$8,956.56</b>

D.W. testified that when the tenancy ended the Landlords discovered that the Tenant had removed the garburator and attached the dishwasher to the main drain. When they tried to clean out the garburator to reattach it, they discovered that it was full of cigarette butts and coins. This debris caused the motor to overheat and the garburator was inoperable. In this respect the Landlords sought monetary compensation in the amount of \$383.86 for the replacement cost.

D.W. testified that the Landlords attempted to clean the carpet themselves to reduce their costs, but the carpets continued to smell of pet urine after being cleaned. As such, the Landlords hired professional carpet cleaners and paid them the amount of \$247.70. In their claim the Landlords sought compensation from the Tenants for this amount. D.W. further advised that the carpets will need to be replaced as the pet urine smell remains, even after professional carpet cleaning. She stated that they only just discovered that the carpets will need to be replaced, and as such they did not amend their claim to include this anticipated amount.

The Landlords also sought \$75.00 which was the amount they paid to have a process server serve the Tenant with a 10 Day Notice to End Tenancy.

The tenancy ended March 17, 2020 pursuant to the 10 Day Notice. At the time the Tenant vacated she had failed to pay rent for November 2019, December 2019, January 2020, February 2020 and March 2020. The Tenant also failed to move her items out of the rental unit and left it in such a condition that the Landlords were not able to rent it in April such that they also sought a loss of rent for April 2020. As such, the Landlord sought \$8,250.00 representing unpaid rent for six months.

The Landlord also sought recovery of the filing fee.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlords' evidence that the Tenant damaged the garburator such that the Landlords incurred the cost to have it replaced. I therefore award the Landlords the amounts claimed for the replacement cost.

In a tenancy of more than one year's duration, tenants are responsible for cleaning the carpets. I find the Landlords attempted to mitigate their losses by cleaning the carpets themselves, however, when the smell of pet urine remained the Landlords incurred the cost to have professionals clean the carpets a second time. I accept the Landlords' undisputed testimony the Tenant's pet cause the damage and I therefore find this to be recoverable from the Tenant.

The Landlord testified that the carpet will likely need to be replaced as despite the second cleaning the pet urine smell remains. In the Application before me the Landlords did not make a claim for the replacement cost of the carpet. Further, I was not provided with any evidence as to the expected cost, nor was I informed of the age of the carpets. I accept the Landlords' submissions that they were not in a position to amend their application to claim replacement costs. I therefore grant the Landlords leave to reapply for monetary compensation for the cost to replace the carpets. I note this does not extend any time limits imposed by the *Act*. The Landlords are also reminded to consider the useful building life of carpets as discussed in *Residential Tenancy Branch Policy Guideline 40*.

The Landlords sought \$75.00 for the cost to serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenant. Such administrative costs are not recoverable under the *Act*. As such, I decline the Landlord's request for related compensation.

Section 26 of the *Act* requires a tenant to pay rent when rent is due. I find the Tenant was obligated to pay rent in the amount of \$1,375.00 per month. I accept the Landlords' testimony and evidence that the Tenant failed to pay rent for five months during her tenancy. I also accept the Landlords' evidence that the date the Tenant vacated the rental unit as well as the condition in which the rental unit was left negatively impacted the Landlords' ability to re-rent the unit for April 2020. I find their loss of rent for this month is recoverable from the Tenant. I therefore award the Landlords' request for compensation equivalent to six months rent.

As the Landlords have been substantially successful in their Application, I also award them recovery of the filing fee.

### Conclusion

The Landlords are entitled to monetary compensation from the Tenant in the amount of **\$8,981.56** for the following:

Cost to replace Garburator	\$383.86
Rug cleaning	\$247.70
Loss of rent for April 2020	\$1,375.00
Unpaid rent November 2019, December 2019, January 2020, February 2020 and March 2020	\$6,875.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$8,981.56</b>

I authorize the Landlords to retain the Tenant's \$687.50 security deposit towards the \$8,981.56 awarded and I grant the Landlords a Monetary Order for the balance due in the amount of **\$8,294.06**. The Landlords must serve the Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

The Landlords are at liberty to reapply for further monetary compensation from the Tenant for the cost to replace the carpet in the rental unit.

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: September 30, 2020

---

Residential Tenancy Branch