



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNRL-S, MNDL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award equivalent to double the amount of the pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy began on October 1, 2019 and ended on June 29, 2020. The tenants were obligated to pay \$2700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1350.00 security deposit and \$350.00 pet deposit. The landlord testified that she did not conduct written condition inspection reports with the tenants at move in or move out. The landlord testified that she did a "walk thru" with the tenants at move in but the tenants were unwilling to discuss damages and cleaning at move out.

The landlord testified that the home was built in the 1940's and is for the most part in original condition. The landlord testified that the tenants left the unit dirty and damaged at move out. The landlord testified that she had to keep the unit empty for ten days after the tenants moved out to get the condition of the unit back up to a suitable level. The landlord testified that the tenants damaged her flower bed and a bamboo carpet among other items in the home. The landlord is seeking a monetary order of \$5513.23 for loss of rent, damages, and cleaning.

The agent for the tenants made the following submissions. SP submits that without the condition inspection reports being done, the landlord has failed to meet her obligation under the Act. SP submits that the tenants are agreeable for the landlord to retain \$300.00 for lightbulbs, carpet cleaning and for the reduced rental amount she received for the remaining three months of the lease. SP submits that although the landlord filed an application to retain the deposit, that application was premature in its filing and that the tenants are entitled to the return of double the security and pet deposit, minus the agreed \$300.00.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the party's claim and my findings around each are set out below. Firstly, I address the landlord's application as follows.

### Landlords Claim

It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlord provided three different amounts that she was seeking for this hearing. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

#### **3.7 Evidence must be organized, clear and legible**

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As noted above, the landlords verbal testimony and documentation were at odds throughout the hearing. SP submits that it was difficult to respond to the landlords

claims as the numbers and totals did not match. The landlord did not conduct written condition inspection reports at move in or move out. The landlord did not provide sufficient evidence to show her attempts to mitigate the losses as required. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other **sufficient supporting documentation** I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support her claim. However, as the tenants have taken responsibility for the burnt-out light bulbs, carpet cleaning and loss of income and are willing to agree to \$300.00 to be paid to the landlord, the landlord is granted that amount.

#### **Security Deposit and Pet Deposit**

Regarding the deposits, the landlord filed their application seeking the deposits as a result of the tenants giving notice to break the lease early and incurring a loss of revenue. When I asked SP to provide argument or a submission as to the tenant's position, she simply replied that they are submitting an argument that the landlord filed early without any supporting section of the Act. I do not agree with the SP's submission that the landlord was required to file another application to retain the deposit as that would be duplicitous, unnecessary and simply illogical. I find that the tenants are not entitled to the return of double the security deposit. However, I do find that the remaining \$1400.00 is to be paid to the tenants.

As neither party was completely successful in their application, neither is entitled to the recovery of the filing fee.

#### **Conclusion**

The landlord has established a claim for \$300.00. I order that the landlord retain that amount from the deposits in full satisfaction of the claim. The landlord is to return the remaining \$1400.00 of the deposits to the tenants. I grant the tenants an order under section 67 for the balance due of \$1400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 08, 2020

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Residential Tenancy Branch