



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants: MNSDS-DR, FFT

Landlord: MNDL-S, MNDCL-S, FFL

### **Introduction**

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

The Tenants’ Application for Dispute Resolution was made on June 17, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on July 3, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

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

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed receipt of their respective Application and documentary evidence packages. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenants' security deposit pursuant to Section 38 and 72 of the *Act*?
4. Are the Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed that the tenancy began on January 1, 2016. During the tenancy, the Tenants were required to pay rent in the amount of \$1,144.00 to the Landlord on the first day of each month. The parties also agreed that the Tenants paid a security deposit in the amount of \$550.00 which the Landlord continues to hold. The Tenancy ended on June 1, 2020. A copy of the tenancy agreement between the parties was submitted into evidence

#### Tenants' Claim

The Tenants are claiming the return of the security deposit in the amount of \$550.00. The Tenant stated that the tenancy ended on June 1, 2020 and that the Tenants provided their forwarding address to the Landlord via text message on June 2, 2020. The Tenant stated that he also provided the Landlord with his forwarding address which was included in the Tenants' Application which had been served to the Landlord by email on June 18, 2020.

The Tenant stated that the Landlord did not provide the Tenants with a final opportunity to take part in a move out condition inspection of the rental unit. As such, the Tenants are under the impression that the Landlord has extinguished his right to retaining the Tenants' security deposit.

In response, the Landlord stated that he did not receive the Tenants' forwarding address by text but did confirm receiving the Tenants' Application on June 18, 2020. The Landlord confirmed he submitted his Application to retain the Tenants' security deposit on July 3, 2020.

If successful, the Tenants are also seeking the return of the filing fee paid to make the Tenants' Application.

### Landlord's Claim

The Landlord is claiming monetary compensation in the amount of \$4,128.55. The Landlord provided a monetary breakdown of his claims which was recorded on a monetary worksheet which was included in the Landlord's Application;

The Landlord is seeking \$2,394.00 to repair five interior doors, repairs to the kitchen walls, kitchen counter repair and to replace some laminate floors which had been damaged by the Tenants during the tenancy. The Landlord provided pictures of the damage in support. The Landlord stated that he has not provided a copy of the invoice to support the cost of the work that was completed, however, did include an estimate.

The Tenant responded by stating that the damage described by the Landlord was present and noted at the time of the move in inspection. A copy of which was provided by the parties. The Tenants have provided some photographic evidence in support that the Tenants returned the rental unit in good condition.

The Landlord is claiming \$70.84 in relation to replacing a shower drain, a new utility room light fixture, and for pest control treatment as there were ants found in the rental unit at the end of the tenancy. The Landlord provided a receipt in support of these costs.

The Tenant acknowledged that the Tenants broke the shower drain and were aware of the ants in the rental unit, however, the Tenant had not notified the Landlord regarding the ants. The Tenant stated that they managed the ant problem each year with various ant control products. The Tenant denied that any lights were malfunctioning.

The Landlord is claiming \$102.52 in relation to cleaning products, replacement of missing light bulbs, door handle hardware for a bi-fold door, and to replace a missing receptacle. The Tenant denied these claims and stated that he was not aware of any missing door handles, light bulbs, or receptacle.

The Landlord stated that at the end of the tenancy he noticed that the bathroom faucet was leaking and had caused damage to the bathroom vanity. The Landlord stated that he was required to replace the faucet in the amount of \$39.19 as well as the vanity in the amount of \$98.78. The Tenant stated that he was unaware that the bathroom faucet leaked and that the Landlord had conducted several condition inspections throughout the tenancy and did not find any leaks either.

The Landlord is claiming \$130.78 in relation to the costs associated with replacing a damaged kitchen drawer and cabinet hinges. The Landlord provided photographic evidence and a receipt in support. The Tenant acknowledged responsibility for damaging the kitchen drawer and cabinet, however, did not agree with the amount being sought.

The Landlord is seeking to be reimbursed \$384.52 in relation to unpaid utility bills. The Landlord stated that the Tenant is required to pay 40 percent of the utility bills. The Landlord provided a copy of the tenancy agreement which indicated that the utilities are not included in the rental.

The Tenant disagreed with paying this amount as he feels as though the Landlord had an illegal suite in the basement which would impact the overall amount of the utilities. The Tenant did acknowledge that he had paid 40 percent of the utilities to the Landlord during the entire tenancy up until the end of the tenancy.

The Landlord is claiming \$38.00 as the Tenant overheld the rental unit for 1 day. During the hearing, the Tenant agreed to paying this amount.

The Landlord is claiming \$84.34 in relation to painting the kitchen walls. The Landlord stated that the Tenant had applied double sided tape to the walls in order to hold some mirrors. The Landlord stated that it was difficult to remove the mirrors and tape at the end of the tenancy and that it caused damage to the walls as a result. The Landlord provided photographic evidence and a receipt in support.

The Tenant responded by acknowledging that the Tenants had left the mirrors and tape on the kitchen wall. The Tenant stated that the tape would have been easy to remove, and placed blame on the Landlord's removal techniques.

The Landlord is claiming \$640.00 in relation to cleaning as the rental unit required further cleaning at the end of the tenancy. The Landlord stated that the blinds were especially dirty and that he employed two cleaners for 8 hours. The Landlord provided

photographic evidence of a dirty rental unit with garbage left all over the kitchen and food left in the fridge.

The Tenant responded by stating that he left the rental unit reasonably clean. The Tenant provided photographic evidence in support of the rental unit being left clean. The Tenant stated that the Landlord took pictures of the rental unit in the morning on June 1, 2020, prior to the Tenants having had an opportunity to clean the rental unit. The Tenant stated that the Tenants cleaned the rental unit later in the day on June 1, 2020. As such, the Tenant stated that the Landlord is trying to be deceptive. The Landlord confirmed that much of the photographic evidence was in fact taken prior to the Tenants cleaning the rental unit.

The Landlord is claiming \$145.58 in relation to replacing four tilt wands on the blinds in the rental unit. The Landlord stated that the Tenants' pets broke the tilt wands which required replacement. The Landlord provided a receipt in support of the replacement cost as well as photographic evidence of the broken blinds. The Tenant stated that he did not notice any tilt wands were broken or missing. The Tenant stated that they kept the blinds open throughout the tenancy.

If successful, the Landlord is seeking to retain the Tenants' security deposit towards their claims as well as to recover the filing fee.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

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

#### The Landlord's Claim

The Landlord is seeking \$2,394.00 in relation to repairs to five interior doors, repairs to the kitchen walls, kitchen counter repair and to replace some laminate floors which had been damaged by the Tenants during the tenancy. In this case, I find that the Landlord has only provided an estimate for the work; however, has provided insufficient evidence to demonstrate that the work has been completed nor has the Landlord demonstrated that he has suffered a loss. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$70.84 in relation to replacing a shower drain, a new utility room light fixture, and for pest control treatment as there were ants found in the rental unit at the end of the tenancy. The Tenant acknowledged that the Tenants broke the shower drain and were aware of the ants in the rental unit, however, the Tenant had not notified the Landlord regarding the ants. In this case, I find that the Landlord has established an entitlement to compensation in the amount of **\$70.84**.

The Landlord is claiming \$102.52 in relation to cleaning products, replacement of missing light bulbs, door handle hardware for a bi-fold door, and to replace a missing receptacle. The Tenant denied this claim and stated that he was not aware of any missing door handles, light bulbs, or receptacle. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants' caused this damage to the rental unit. As such, I dismiss this claim without leave to reapply.

The Landlord stated that at the end of the tenancy he noticed that the bathroom faucet was leaking and had caused damage to the bathroom vanity. The Landlord stated that he was required to replace the faucet in the amount of \$39.19 as well as the vanity in the amount of \$98.78. The Tenant stated that he was unaware that the bathroom faucet leaked and that the Landlord had conducted several condition inspections throughout

the tenancy and found any leaks either. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants' caused the leak, or that they were aware of the leak during the tenancy. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$130.78 in relation to the costs associated with replacing a damaged kitchen drawer and cabinet hinges. The Landlord provided photographic evidence and a receipt in support. The Tenant acknowledged responsibility for damaging the kitchen drawer and cabinet, however, did not agree with the amount being sought. I find that the Landlord has provided sufficient evidence to support the cost associated with replacing the kitchen drawer and cabinet hinges. As such, I find that the Landlord is entitled to compensation in the amount of **\$130.78**.

The Landlord is seeking to be reimbursed \$384.52 in relation to unpaid utility bills. The Landlord stated that the Tenant is required to pay 40 percent of the utility bills. In this case, I am satisfied that the Tenant has paid 40 percent of the bills throughout the tenancy. As such, I find it is more likely than not that the Tenant is required to pay 40 percent of the utility bills provided by the Landlord. I find that the Landlord is entitled to compensation in the amount of **\$384.52**.

The Landlord is claiming \$38.00 as the Tenant overheld the rental unit for 1 day. During the hearing, the Tenant agreed to paying this amount. As such, the Landlord is awarded compensation in the amount of **\$38.00**.

The Landlord is claiming \$84.34 in relation to painting the kitchen walls. The Tenant responded by acknowledging that the Tenants had left the mirrors and tape on the kitchen wall. I find that it would have been the Tenant's responsibility to remove the mirrors and tape from the walls at the end of the tenancy. I accept that removing the tape caused damage to the walls which required repair and paint. As such, I find that the Landlord has provided sufficient evidence to demonstrate and entitlement to compensation in the amount of **\$84.34**.

The Landlord is claiming \$640.00 in relation to cleaning as the rental unit required further cleaning at the end of the tenancy. The Landlord stated that the blinds were especially dirty and that he employed two cleaners for 8 hours.

I find that the Landlord's photographic evidence pertains to the condition of the rental unit prior to the Tenants cleaning the rental unit. I find that the Landlord has provided insufficient evidence to demonstrate that the rental unit required further cleaning. I

accept the photographic evidence presented by the Tenant as to the condition of the rental unit after they were done cleaning the rental unit, which appeared to be reasonably clean. As such, I dismiss the Landlord's claim for cleaning costs, without leave to reapply.

The Landlord is claiming \$145.58 in relation to replacing four tilt wands on the blinds in the rental unit. The Landlord stated that the Tenants' pets broke the tilt wands which required replacement. The Tenant stated that he did not notice any tilt wands were broken or missing. In this case, I find the Landlord has established an entitlement to compensation in the amount of **\$145.58** to replace the tilt wands.

Having been partially successful with their Application, I find the Landlord is entitled to the recovery of their **\$100.00** filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of **\$954.06**.

#### The Tenants' Claim

With respect to the Tenants' claim for the recovery of their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against 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. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenants argument that the Landlord extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims do not solely relate to damage to the rental unit but also for loss in the case of unpaid utilities. As a result, whether they extinguished or not has no bearing on the outcome of the current Applications.

I accept that the tenancy ended on June 1, 2020 and that the Tenants provided the Landlord with their forwarding address by text on June 2, 2020. The Landlord stated that he did not received the Tenants' text.



Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

In this case, I find there is no evidence to confirm that the Landlord received the Tenants' forwarding address. I further find that the text message does not meet the requirements of Section 88 of the *Act*.

I accept that the Tenants served their Application to the Landlord on June 18, 2020 which contained the Tenants' forwarding address. I find that the Landlord submitted their Application on July 3, 2020 which is within the time limit permitted under the *Act*. Accordingly, I find the Tenants are not entitled to the return of double the amount of the deposit.

Having not been successful in their Application, I find the Tenants are not entitled to the recovery of their filing fee.

Pursuant to section 67 of the *Act*, I find that the Landlord has demonstrated an entitlement to retain the security deposit in the amount of \$550.00 in partial satisfaction of the monetary award granted. I grant the Landlord with a monetary order in the amount of \$404.06 (\$954.06 - \$550.00).

Conclusion

Pursuant to section 67 of the Act, the Landlord is granted a monetary order in the amount of \$404.06. The monetary order must be served on the Tenants and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 14, 2020

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Residential Tenancy Branch