



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, FFL, MNDL

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 23, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The Landlord P.D. and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Landlord stated that she served the Tenants with her Application and documentary evidence. The Tenants confirmed receipt, however, indicated that they did not received some digital evidence. During the hearing, the Landlord stated that she did not send the Tenants nor the Residential Tenancy Branch digital evidence. I find that the Landlords' Application and documentary evidence was sufficiently served to the Tenants, pursuant to Section 71 of the *Act*.

The Tenants stated that they sent the Landlords a copy of their documentary evidence by Canada Post Registered Mail on December 31, 2020. The Tenants provided a picture of their envelope which has confirmation of postage service addressed to the Landlords and date stamped on December 31, 2020. The Landlord stated that she has not yet received the Tenants' documentary evidence.

I find that the Tenants have provided sufficient evidence to demonstrate that it is more likely than not that they sent the Landlords their documentary evidence by Canada Post on December 31, 2020. As such, based on the oral and written submissions of the Tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the documentary evidence on January 5, 2021, the fifth day after the mailing.

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.

### Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords 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 to the following; the tenancy began on January 1, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$2,100.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,050.00 which the Landlords continue to hold. The tenancy ended on September 30, 2020.

The Landlords provided a monetary worksheet which outlines the monetary claims that they are seeking compensation for;

The Landlord stated that the parties agreed at the start of the tenancy that the Tenants would be required to pay two thirds of the hydro and half of the internet bills throughout the tenancy. The Landlord stated that this term was included in the addendum to the tenancy agreement which the Landlords provided in their evidence. The Landlord stated that the Tenants did not pay for any utilities throughout the tenancy, therefore, the Landlords are claiming \$1,219.24 for unpaid utilities. The Landlords provided a copy of the utility bills and the addendum to the tenancy agreement in support.

The Tenants responded by stating that they were aware that they were required to pay the above mentioned utilities to the Landlords during their tenancy. The Tenants stated that the Landlords did not provide them with a copy of the bills during the tenancy, and that the Landlords tried to change the amount owed during the tenancy. The Tenants stated that it was made clear to them that they owed two thirds of the hydro and for half of the internet and that they did not pay any of these amount to the Landlords.

The Landlords are claiming \$1,849.71 in relation to landscaping costs. The Landlord stated that the Tenants proceeded to cut down the privacy hedge on the side of the rental property without permission. The Landlord stated that the Tenants planted some fruit trees where the privacy hedge had been located. The Landlords provided pictures and a quote in support of the costs to remove the old stumps and to replant a new cedar hedge.

The Tenants responded by stating that they did not cut down the hedge, but rather it was the neighbour who was seeking to brighten their backyard by removing the trees. The Tenants stated that the hedge was on the neighbour's property.

The Landlords are claiming \$2,724.50 in relation to replacing the bathtub at the rental unit. The Landlord stated that the Tenants cracked the bathtub during the tenancy. The Landlord stated that they patched the bathtub during the tenancy, which was only meant to be a temporary fix. The Landlord stated that they are seeking to replace the bathtub as well as the tub surround now that the tenancy has ended. The Landlords provided a quote in support. The Tenants responded by acknowledging that they broke the bathtub during the tenancy.

The Landlords are claiming \$731.90 in relation to replacing the dishwasher in the rental unit. The Landlord stated that the dishwasher was not functioning at the end of the tenancy. The Landlord stated that she did not hire a technician to try and repair the dishwasher as her father is mechanically inclined and had a look at it. The Landlord stated that they determined that the dishwasher needed replacement.

The Tenants responded by stating that they rarely used the dishwasher, however, they stated that the dishwasher was working at the end of their tenancy. The Tenants stated that they suspect that the Landlord is completing renovations of the rental unit and that are claiming the cost of doing so against the Tenants.

The Landlords are claiming for the loss of rental income for 5 days in the amount of \$387.04. The Landlord stated that the Tenants moved out of the rental unit on September 30, 2020 after being served with an Order of Possession. The Landlord stated that they had a new occupant who was meant to move in on October 1, 2020. The Landlord stated that it took 5 days to clean the rental unit and to complete some dump runs, which prevented the new occupant from occupying the rental unit for 5 days. The Landlords are therefore seeking a pro rated amount of rent for their loss.

The Tenants responded by stating that they were told by the Landlords not to return to the rental unit after they moved out on September 30, 2020. The Tenants stated that they had intended to return to the rental unit to clean and to remove their items, however, felt as though they were not welcome to do so. As such, they did not return to the rental unit.

The Landlords are claiming for lost wages in the amount of \$1,358.21 as a result of having to travel to the rental unit to clean and conduct dump runs for 5 days at the end of the tenancy. During the hearing, the Landlord was notified that there are no provisions under the Act to compensate Landlord for the cost of performing their duties as a Landlord.

The Landlords are claiming \$434.06 in relation to replacing the locks in the rental unit. The Landlord stated that the Tenants did not return the keys to the rental unit at the end of the tenancy. As such, the Landlords were required to replace the locks to the rental unit. The Landlords did not provide a receipt in support of the cost.

The Tenants stated that they were never provided with keys at the start of the tenancy. The Tenants stated that the locks to the rental unit had a pin pad, which they were required to enter a code to unlock the door. The Tenants stated that the Landlords can change the code to the locks, should they have any concerns.

The Landlords are claiming \$3,900.00 in relation to cleaning costs as the Landlord was required to clean the rental unit at the end of the tenancy. The Landlords provided several pictures of items which were left behind inside and outside of the rental unit at the end of the tenancy. The Landlords provided a monetary breakdown of the costs associated with cleaning the rental unit which consisted of \$50.00 for cleaning products, \$3,600.00 for 3 cleaners for 5 days at \$30.00 per hour, \$150.00 for two dump runs and \$100.00 for dump expenses.

The Tenants acknowledged that they were in a hurry to move out of the rental unit as the Landlords were urging them to leave based on the Order of Possession served, and to not return to the rental unit. The Tenants stated that they did not have time to clean the rental unit and would have liked to return to collect their items left behind.

### Analysis

Based on the oral testimony and documentary evidence, 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 Landlords 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 Tenant. Once that has been established, the Landlords 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 Landlords are claiming \$1,219.24 for unpaid utilities. The Landlords provided a copy of the utility bills and the addendum to the tenancy agreement in support of the Tenants being required to pay utilities to the Landlord. During the hearing, the Tenants confirmed that they were aware that they were required to pay the utilities. As such, I find that the Landlords are entitled to compensation in the amount of **\$1,219.24** for unpaid utilities.

The Landlords are claiming \$1,849.71 in relation to landscaping costs. The Landlord stated that the Tenants proceeded to cut down the privacy hedge on the side of the rental property without permission. The Tenants responded by stating that they did not cut down the hedge, but rather it was the neighbour who was seeking to brighten their backyard by removing the trees. The Tenants stated that the hedge was on the neighbour's property. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the trees were on their rental property and that the Tenants were the ones responsible for cutting down the trees. Furthermore, I find that the Landlords

have not yet replaced the cedar trees, therefore, have not yet incurred a loss as a result. As such, I dismiss the Landlords' claim for landscaping without leave to reapply.

Section 37(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.

The Landlords are claiming \$2,724.50 in relation to replacing the bathtub at the rental unit. The Landlord stated that the Tenants cracked the bathtub during the tenancy. The Tenants responded by acknowledging that they broke the bathtub during the tenancy. As such, I find that the Landlords are entitled to monetary compensation in the amount of **\$2,724.50** to replace the bathtub in the rental unit.

The Landlords are claiming \$731.90 in relation to replacing the dishwasher in the rental unit. The Landlord stated that the dishwasher was not functioning at the end of the tenancy. The Landlord stated that she did not hire a technician to try and repair the dishwasher as her father is mechanically inclined and had a look at it. The Landlord stated that they determined that the dishwasher needed replacement.

I find that the Landlords provided insufficient evidence to demonstrate that the dishwasher was broken to the extent that it required complete replacement. I find that the Landlords did not provide any evidence to demonstrate that they had a qualified technician inspect the dishwasher in an attempt to repair the dishwasher prior to its replacement. As such, I find that the Landlords have not mitigated their loss and I therefore dismiss their claim for a new dishwasher without leave to reapply.

The Landlords are claiming for the loss of rental income for 5 days in the amount of \$387.04 as it took 5 days to clean the rental unit and to complete some dump runs, which prevented the new occupant from occupying the rental during this time. I find that the Landlords provided insufficient evidence to demonstrate that they had a new occupant who was prepared to move into the rental unit on October 1, 2020. Furthermore, the Landlords provided insufficient evidence to demonstrate that the new occupant was unable to occupy the rental unit for 5 days. I find that the Landlords have not demonstrated that they suffered a loss of 5 days rent, as such, I dismiss their claim without leave to reapply.

The Landlords are claiming for lost wages in the amount of \$1,358.21 as a result of having to travel to the rental unit to clean and conduct dump runs for 5 days at the end of the tenancy. During the hearing, the Landlord was notified that there are no provisions under the Act to compensate Landlord for the cost of performing their duties as a Landlord. I therefore dismiss this claim without leave to reapply.

The Landlords are claiming \$434.06 in relation to replacing the locks in the rental unit as the Tenants did not return the keys at the end of the tenancy. The Tenants stated that they were never provided with keys and that the locks to the rental unit had a pin pad, with which they were required to enter a code, which would unlock the door. I find that the Landlords provided insufficient evidence to demonstrate that the Tenants were provided with keys to the rental unit at the start of the tenancy. Furthermore, the Landlords provided insufficient evidence to support the value of their loss. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$3,900.00 in relation to cleaning costs as the Landlord was required to clean the rental unit at the end of the tenancy. The Landlords provided a monetary breakdown of the costs associated with cleaning the rental unit which consisted of \$50.00 for cleaning products, \$3,600.00 for 3 cleaners for 5 days at \$30.00 per hour, \$150.00 for two dump runs and \$100.00 for dump expenses.

The Tenants acknowledged that they were in a hurry to move out of the rental unit as the Landlords were urging them to leave based on the Order of Possession served, and to not return to the rental unit. The Tenants stated that they did not have time to clean the rental unit and would have liked to return to collect their items left behind.

In this case, I find that it would have been the Tenants' responsibility to ensure the rental unit was left reasonably clean at the end of the tenancy. I find that the Landlords provided sufficient evidence to demonstrate that the Tenants left many of their items behind which would have required the Landlords to dispose of these items. As such, I find that the Landlords are entitled to **\$250.00** of their claim for expenses related to the dump runs.

The Landlords are claiming \$3,600.00 for hiring 3 cleaners over 5 days at \$30.00 per hour. I find that the Landlords provided insufficient evidence to demonstrate that the Tenants left the rental unit so dirty that it required such extensive cleaning. "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven

that there has been an infraction of a legal right. I find that the Landlords are entitled to **\$500.00** for cleaning and cleaning products.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain the security deposit in the amount of \$1,050.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$3,743.74, which has been calculated below;

<b>Claim</b>	<b>Amount</b>
Unpaid utilities:	\$1,219.24
Bathtub Replacement:	\$2,724.50
Garbage Removal:	\$250.00
Cleaning	\$500.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-( \$1,050.00 )</i>
<b>TOTAL:</b>	<b>\$3,743.74</b>

### Conclusion

The Landlords have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$3,743.74**. The order should be served to the Tenants as soon as possible 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: January 26, 2021

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Residential Tenancy Branch