



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Macdonald Commercial and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 15, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord's Agents, K.W. and C.L., and the Tenants attended the hearing at the appointed date and time. The Landlord's Agents stated that they served their Application and documentary evidence to the Tenants on October 25, 2020, as well as further evidence on January 22, 2021 via Registered Mail. The Landlord provided a copy of the Registered Mail receipts in support. The Tenants confirmed receipt. I find that the Tenants were sufficiently served pursuant to Sections 88 and 89 of the *Act*.

The Tenants testified that they served a copy of their documentary evidence to the Landlord's Agents on February 2, 2021 via courier. The Tenants stated that according to the tracking information, the Landlord's Agents received the package on February 3, 2021. The Landlord's Agents stated that they have not yet received the Tenants' documentary evidence. The Tenants did not submit any evidence in support of the mailing. Based on the oral submissions of the Tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenants' documentary evidence on February 7, 2021, the fifth day after the mailing.

## Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure;

### **3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

### **3.16 Respondent's proof of service**

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

I find the Tenants provided insufficient evidence to demonstrate that the Landlord or their Agents received the Tenants' documentary evidence on February 3, 2021 as stated by the Tenants. As such, the Landlord is deemed to have been served on February 7, 2021. I find that the Landlord was served less than seven days before the hearing, contrary to the Rules of Procedure 3.15. Furthermore, the Landlord's Agents stated they have not yet received the Tenants' documentary evidence. As such, the Tenants' documentary evidence will not be considered in this decision.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord 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 started on October 1, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$4,500.00 to the Landlord on the first day of each month. The Tenants paid a security and pet damage deposit, each in the amount of \$2,250.00 for a total of \$4,500.00 currently being held by the Landlord. The tenancy ended on September 30, 2020.

The Landlord set out their monetary claims on a monetary worksheet which was submitted with their Application;

The Landlord is claiming \$1,837.50 in relation to damaged curtain sheers in the rental unit. The Landlord's Agents stated that the Landlord has not yet replaced the curtain sheers, however, provided a quote to replace them in support. The Tenants stated that the curtain sheers were not marked as being included in the rent, therefore, they should not be responsible for replacing them.

The Landlord is claiming \$315.00 to replace lightbulbs throughout the rental unit. The Landlord's Agents stated that there were 14 lightbulbs that needed to be replaced at the end of the tenancy. The Landlord's Agents stated that several of the lights in the rental unit require rare light bulbs which were more expensive. The Tenants responded by stating that there were many missing light bulbs at the start of the tenancy, which was also indicated in the condition inspection report at the start of the tenancy. Furthermore, the Tenants stated that they had requested that the Landlord replace the light bulbs at the start of the tenancy, which was never completed by the Landlord.

The Landlord is claiming \$472.50 in relation to replacing damaged baseboards. The Landlord provided picture and an invoice in support. The Tenants stated that they had the baseboards repainted during the tenancy and stated that the rental unit was

returned to the Landlord in better condition at the end of the tenancy compared to the start of the tenancy.

The Landlord is claiming \$500.00 for repair a damaged drawer in a bathroom vanity. The Landlord's Agents stated that the paint was peeling on the drawer, which required to be repainted. The Tenants stated that the bathroom had water damage issues at the start of the tenancy and that the Tenants notified the Landlord who did not take action to repair the problem.

### 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 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.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or

site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlord is claiming \$1,837.50 in relation to damaged curtain sheers in the rental unit. The Landlord's Agents stated that the Landlord has not yet replaced the curtain sheers, however, provided a quote to replace them in support. I find that the Landlord has not yet incurred a loss as they have not replaced the curtain sheers in the rental unit. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$315.00 to replace lightbulbs throughout the rental unit. The Landlord's Agents stated that there were 14 lightbulbs that needed to be replaced at the end of the tenancy. In this case, I find that the condition inspection report provided by the Landlord indicates that there were several missing light bulbs at the start of the tenancy. I find that the Landlord has provided insufficient evidence to demonstrate that they replaced the lightbulbs during the tenancy. As such, I find that the Landlords are not entitled to monetary compensation for replacing the light bulbs at the end of the tenancy and therefore dismiss the claim without leave to reapply.

The Landlord is claiming \$472.50 in relation to replacing damaged baseboards. The Landlord provided picture and an invoice in support. I find that the Landlords provided sufficient evidence to demonstrate that the baseboards were damaged during the tenancy. I find that the Landlord is entitled to monetary compensation in the amount of **\$472.50**.

The Landlord is claiming \$500.00 for repair a damaged drawer in a bathroom vanity. In this case, I find that the cost of repainting one bathroom vanity drawer for \$500.00 seems extravagant. I find that the Landlord did not mitigate their loss by seeking other quotes for the repair. As such, I dismiss their Landlord's claim without leave to reapply.

Having been partially successful, I find the Landlord is 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 Landlord retain \$572.50 from the \$4,500.00 security and pet damage deposit held in satisfaction of the claim ( $\$4,500.00 - \$572.50 = \$3,927.50$ )

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$3,927.50, which represents the remaining balance of their security and pet damage deposits less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$572.50 which has been deducted from the Tenants' security deposit and pet damage deposits. The Tenants are granted a monetary order in the amount of \$3,927.50 which represents the remaining balance of the Tenants' deposits. The order should be served to the Landlord 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: February 12, 2021

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Residential Tenancy Branch