



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on October 13, 2020 (the "Application"). The Landlords 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 Landlords, the Landlord's Agent J.M., and the Tenants attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. 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 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. Are the Landlords entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. 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 that the tenancy began on July 29, 2017. 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 parties agreed that the tenancy ended on September 30, 2020.

The Landlords set out their monetary claims on the monetary worksheet provided in their Application;

The Landlords are claiming \$804.30 in relation to replacing the carpet on the stairs in the rental unit. The parties agreed that the Tenants' cat scratch the carpet on the stairs, causing damage. The Landlords stated that they were required to replace all the carpet on the stairs rather than just the damaged portion. The Tenants stated that the carpet had surpassed its useful life, therefore, they should not have to pay the Landlords. The Landlords stated that the carpet had been replaced sometime between 2009 and 2012. The Landlords provided photographic evidence and an invoice in support.

The Landlords are claiming \$105.00 in relation to yard work. The Landlords stated that the Tenants were responsible for maintaining the yard at the rental property during the tenancy. The Landlords stated that at the end of the tenancy, the Tenants had left some weeds in the garden, overgrown ground cover on the side of the house which needed to be removed, and some untrimmed trees. The Tenants stated that they did maintain the yard to a reasonable standard, however, the Landlords are now claiming for work that was above what they would have been reasonably expected to do on their own.

The Landlords are claiming \$210.00 in relation to repairing damage to one wall as well as paint in the living room. The Landlords stated that the Tenants had mounted something to the wall which damaged the wall once removed. The Tenants acknowledged that they had hung up a painting, and that the damage should be considered reasonable wear and tear.

During the hearing, the Landlords mentioned that they wished to claim for the cost of the Registered Mail used to serve documents to the Tenants in preparation for the hearing. The Landlord's were notified during the hearing, that these costs are not recoverable under the *Act*. If successful, the Landlords are seeking the return of the filing fee and wish to retain the Tenants' security deposit towards their claims.

### 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 Tenants. 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 Landlords 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 Landlords are claiming \$804.30 in relation to replacing the carpet on the stairs in the rental unit. The parties agreed that the Tenants' cat scratch the carpet on the stairs, causing damage. The Tenants stated that the carpet had surpassed its useful life, while the Landlords stated that the carpet had been replaced sometime between 2009 and 2012.

According to the Residential Tenancy Branch Policy Guideline 40; The Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for determining damages which the director has the authority to determine under the *Residential Tenancy Act*. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. The Policy Guideline outlines that the carpet in the rental unit has a useful life of 10 years.

During the hearing, the Landlords stated that the carpet had been installed between 2009 and 2012. As such, I find that the carpet in the rental unit has either surpassed or was close to surpassing its useful life. As such, I find that the Landlords are not entitled to the full amount of their claim for new carpet on the stairs. I do however accept that the Tenants acknowledged that their cat caused damage to the carpet on the stairs in the rental unit. In this case, I find that Tenants are responsible for some damage to the carpet.

“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. In this case, I find that the Landlords are entitled to a nominal award for the damaged caused to the carpet by the Tenants’ cat in the amount of **\$100.00**.

The Landlords are claiming \$105.00 in relation to yard work. The Landlords stated that at the end of the tenancy, the Tenants had left some weeds in the garden, overgrown ground cover on the side of the house which needed to be removed, and some untrimmed trees. The Tenants stated that they did maintain the yard to a reasonable standard, however, the Landlords are now claiming for work that was above what they would have been reasonably expected to do on their own.

In this case, I find that the Landlords have provided insufficient evidence to demonstrate that the Tenants were required to perform the duties which were completed by the gardener at a cost of \$105.00. As such, I dismiss the Landlords’ claim without leave to reapply.

The Landlords are claiming \$210.00 in relation to repairing damage to one wall as well as paint in the living room. The Tenants acknowledged that they had hung up a painting, and that the damage should be considered reasonable wear and tear. I find that the Landlords have provided sufficient evidence to demonstrate that the damage left on the wall by the Tenants exceeds what would be considered to be reasonable wear and tear. As such, I find that the Landlords are entitled to compensation in the amount of **\$210.00**.

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 \$410.00 from the \$1,050.00 security deposit held in satisfaction of the claim ( $\$1,050.00 - \$410.00 = \$640.00$ )

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$640.00, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$410.00 which has been deducted from the security deposit. The Tenants are granted a monetary order in the amount of \$640.00 which represents the remaining balance of the Tenants' security deposit. 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 04, 2021

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Residential Tenancy Branch