



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, FFL, MNDCL-S, MNRL-S

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 20, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The hearing was scheduled for 1:30pm on February 16, 2021 as a teleconference hearing. Only the Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

### Preliminary Matters

The Landlord had applied for a Substituted Service Order allowing the Landlord to serve the Tenant through a different method than what is permitted under the *Act*. On January 25, 2021 the Landlord was granted the Substituted Service Order which allows the Landlord to serve the Tenant with the Application for Dispute Resolution and supporting documents via e-mail.

The Landlord stated that the Application and documentary evidence package was served to the Tenant by e-mail on January 27, 2021. The Landlord provided proof of

service in support. According to the Substituted Service Decision dated January 25, 2021, the Tenant is deemed served 3 days later.

The Landlord also stated that she had hired a process server who managed to serve the Tenant in person with the Landlord's Application and documentary evidence on January 26, 2021. The Landlord provided an Affidavit in support. As such, I find that the Tenant was sufficiently served with the Application and documentary evidence on January 26, 2021 in person and on January 30, 2021 by e-mail, pursuant to Section 71 of the *Act*.

The Landlord was 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 compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The Landlord stated that the tenancy began on October 6, 2018. During the tenancy, the Tenant was required to pay rent in the amount of \$1,800.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlord continues to hold. The Landlord stated that the tenancy ended on October 20, 2020.

The Landlord is claiming \$5,000.00 for compensation in relation to the insurance deductible she paid. The Landlord stated that there was an incident which took place at the rental unit on September 19, 2020. The Landlord stated that the Tenant flooded the rental unit, causing significant damage to the rental unit. The Landlord stated that other

rental units were impacted as a result of the flood. The Landlord stated she contacted her insurance provider to arrange for the remediation. The Landlord provided an invoice in the amount of \$5,000.00 for the insurance deductible. The Landlord also provided photographic evidence of the damage in support.

The Landlord is seeking \$2,900.00 for loss of rent. The Landlord stated that due to the flood caused by the Tenant, the Landlord was unable to re-rent the rental unit until such a time that the rental unit was repaired. The Landlord stated that the repairs took from October to December 2020 to be completed. The Landlord stated that she was compensated \$2,500.00 for loss of rent from her Insurance Company. The Landlord stated that she is claiming \$2,900.00 for the remaining portion of unpaid rent. The Landlord provided the construction schedule in support.

The Landlord is also claiming \$166.43 for the cost associated with hiring a process server to locate and to serve the Tenant in person with the Landlord's Application and documentary evidence. The Landlord provided a copy of the invoice in support.

If successful, the Landlord is also claiming to retain the Tenant's security deposit and for the return of the filing fee paid to make the Application.

### Analysis

Based on the uncontested affirmed 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 Tenant. 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.

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 Landlord is claiming \$5,000.00 for compensation in relation to the insurance deductible she paid. In this case, I find that the Tenant caused a flood in the rental unit which required repair. I find that the Tenant breached the *Act*, and I am satisfied that the Landlord was required to pay the Insurance deductible in order to remediate the damage to the rental unit and surrounding units. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$5,000.00**.

The Landlord is seeking \$2,900.00 for loss of rent as she was unable to re-rent the rental unit from October to December 2020 as a result of the construction to repair the damage caused by the Tenant. As such, I find that the Landlord is entitled to compensation in the amount of **\$2,900.00** for loss of rent.

The Landlord is claiming \$166.43 for the cost associated with hiring a process server to locate and to serve the Tenant in person with the Landlord's Application and documentary evidence. In this case, I find that the Landlord was successful with her Substituted Service Application, therefore, employing a process server was not necessary. I find that the Landlord did not mitigate their loss and therefore dismiss this 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 the security deposit in the amount of \$900.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$7,100.00, which has been calculated below;

<b>Claim</b>	<b>Amount</b>
Insurance Deductible:	\$5,000.00
Loss of Rent:	\$2,900.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$900.00</i> )
<b>TOTAL:</b>	<b>\$7,100.00</b>

### Conclusion

The Landlord has established an entitlement to monetary compensation and have been provided with a monetary order in the amount of **\$7,100.00**. The order should be served to the Tenant 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 16, 2021

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Residential Tenancy Branch