



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:38 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue – exclusion of ME

The landlord withdrew the application against respondent ME and affirmed he wants to proceed only against tenants WS and AE.

I exercise my authority under section 64(3)(c) of the Act to exclude respondent ME.

### Preliminary Issue – Service

I accept the landlord's testimony that tenants WS and AE (the tenants) were served with the application and evidence (the materials) by registered mail on June 02, 2021, in accordance with section 89(1)(d) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on June 07, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

The landlord stated he served a second package of evidence to the tenants on August 30, 2021 (the tracking numbers are recorded on the cover page of this decision). Given the evidence of registered mail the tenants are deemed to have received the second package of evidence on September 04, 2021.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on September 01, 2020 and ended on May 01, 2021. Monthly rent was \$1,850.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$925.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord confirmed receipt of the forwarding address on May 04, 2021 and the authorization to retain \$100.00 from the deposit. The email sent by the tenants states:

I would like to follow up to see if any progress has been made regarding the return of our damage deposit since we returned the keys on May first. [Landlord] had expressed that there should be compensation for the damaged table in the living room. [Tenants WS and AE] agree that it would be fair to allow for a deduction from our damage deposit exceeding no more than \$100 to purchase a new table. We believe that the condition of the table when we moved in does not warrant any price greater than \$100. A suitable replacement at equal quality can be found online.

We expect to receive the remainder of our damage deposit, \$825, mailed to [forwarding address], by May 20th, 2021 as per the BC Residential Tenancy Agreement.

Please follow up with your thoughts on how you would like to proceed.

The landlord said when the tenancy ended the parties conducted a move out inspection. A copy of the Condition Inspection Report (CIR) was submitted into evidence. It does not indicate the condition of the rental unit when the tenancy ended, and it is not signed by the parties.

The landlord is seeking compensation in the amount of \$1,997.68 for mould repair and \$300.00 for drywall and tiles repair in the living room. The landlord affirmed when the tenancy started the furnished rental unit was in good condition. The landlord stated the tenants put a fish tank on top of a table in the living room and water leaked from the fish tank. The water caused mould in the living room drywall and floor and the landlord hired a contractor to remove the mould. A mould treatment estimate and an invoice in the amount of \$1,997.68 were submitted into evidence. The landlord testified he needed to replace the living room drywall and tiles because of the mould treatment service. The landlord worked for 20 hours and is claiming compensation in the amount of \$300.00 for his labour. The landlord submitted 6 photographs into evidence showing mould, drywall and tile damage in the living room.

The landlord is seeking compensation in the amount of \$350.00 because the tenants are responsible for the living room table damage. The landlord said the water that leaked from the fish tank damaged the living room table. The landlord submitted 6 photographs showing a damaged table and a receipt for a new table in the amount of \$778.40. The landlord is claiming \$350.00 because the table was 7 years old when the tenancy ended.

The landlord is seeking compensation in the amount of \$91.83 because the tenants removed the brand-new mattress cover and replaced it with a smaller one that does not

cover the mattress. The landlord submitted into evidence a receipt in the amount of \$91.83.

The landlord is seeking compensation in the amount of \$52.00 because the tenants damaged two patio tiles. The landlord affirmed the tenants left metal weights on two tiles of the patio and the weights rusted the tiles. The landlord could not clean the tiles and replaced them. The landlord paid \$52.00 for the 2 new tiles. The landlord submitted 2 photographs into evidence.

The landlord submitted into evidence a monetary order worksheet indicating a total claim of \$2,791.51.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### Move out inspection

Regulations 19 and 20 provide:

Disclosure and form of the condition inspection report

19 A condition inspection report must be

(a) in writing,

(b) in type no smaller than 8 point, and

**(c) written so as to be easily read and understood by a reasonable person.**

20 Standard information that must be included in a condition inspection report

(1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

[...]

**(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:**

**(i) entry; (ii) living rooms; (iii) kitchen; (iv) dining room or eating area;**

**(v) stairs; (vi) halls; (vii) bathrooms; (viii) bedrooms; (ix) storage; (x) basement or crawl space; (xi) other rooms; (xii) exterior, including balcony, patio and yard; (xiii) garage or parking area;**

**(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;**

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [condition inspection: end of tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

**(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;**

**(b) if agreed upon by the landlord and tenant,**

**(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,**

**(ii) the tenant's signature indicating agreement with the deduction, and**

**(iii) the date on which the tenant signed.**

(emphasis added)

I find the report does not comply with regulations 19 and 20, as it does not itemize the condition of items at the end of the tenancy and cannot be easily read and understood.

Section 35(3) requires the landlord to complete the report in accordance with the regulations.

Section 36(2) of the Act states:

Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Policy Guideline 17 explains: “7. The right of a landlord to obtain the tenant’s consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.”

Thus, the landlord extinguished his right to claim against the deposit, per section 36(2)(c) of the Act.

#### Deposit

Section 38(1) of the Act requires the landlord to either return the tenant’s deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant’s forwarding address in writing.

The landlord confirmed receipt of the tenants’ forwarding address on May 04, 2021 and submitted this application for an authorization to retain the deposit.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenants double the amount of the deposit retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:  
if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

The tenants authorized the landlord to retain \$100.00. Residential Tenancy Branch Policy Guideline 17 states:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.  
The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,650.00 (double the balance of the \$925.00 deposit after the \$100.00 authorized deduction;  $\$825.00 \times 2$ )

#### Living room repairs

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

Based on the landlord's undisputed convincing testimony and the photographs, I find the tenants breached section 32(3) of the Act by failing to repair the mould, drywall and tiles in the living room damaged by the water from the fish tank. Based on the landlord's undisputed convincing testimony and the receipt, I find the landlord suffered a total loss of \$2,297.68 because of the tenants' failure to comply with the Act.

I award the landlord compensation in the amount of \$2,297.68 for the living room repairs.

#### Table

Based on the landlord's undisputed convincing testimony and the photographs, I find the tenants breached section 32(3) of the Act by failing to repair the living room

table damaged by the water from the fish tank and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Residential Tenancy Branch Policy Guideline 40 states that the useful life of furniture is 10 years. As the table was 7 years old when the tenancy ended, I award the landlord 30% of the table replacement cost.

As such, I award the landlord compensation in the amount of \$233.52 (30% of \$778.40).

#### Mattress cover

Based on the landlord's undisputed convincing testimony and the receipt, I find the tenants breached section 32(3) of the Act by removing the brand-new mattress cover and replacing it with a smaller one that does not cover the mattress. I find the landlord suffered a loss of \$91.83 because of the tenants' failure to comply with the Act.

I award the landlord compensation in the amount of \$91.83.

#### Patio tiles

Residential Tenancy Branch Policy Guideline 1 states: "The tenant is not responsible for reasonable wear and tear to the rental unit or site".

Based on the photographs submitted into evidence, I find damage caused to the patio tiles is standard wear and tear.

Thus, I dismiss the claim for compensation for the patio tiles.

#### Landlord' filing fee and summary

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to:



<b>Expenses</b>	<b>\$</b>
Living room repairs	2,297.68
Table	233.52
Mattress cover	91.83
Filing fee	100.00
<b>Total</b>	<b>2,723.03</b>

#### Set-off

The landlord is awarded \$2,723.03. The tenants are awarded \$1,650.00.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, the landlord is awarded \$1,073.03.

#### Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$1,073.03.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: November 19, 2021

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Residential Tenancy Branch