



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDL-S FFL

### Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). They seek to retain a portion of the tenants' security deposit in satisfaction of any compensation awarded, pursuant to section 38(4)(b) of the Act. In addition, they seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

### Preliminary Issue: Service

The landlord's agent (hereafter the "landlord") attended the hearing, but neither respondent attended. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified under oath that they served the Notice of Dispute Resolution Proceeding, and documentary evidence, by registered mail on or about October 1, 2021, which is a permitted method of service under section 89 of the Act.

Given the undisputed, sworn testimony of the landlord, it is my finding that the tenants were appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings.

### Issue

Is the landlord entitled to compensation?

### Background and Evidence

The tenancy began on August 16, 2018 and ended on July 5, 2021. Rent was \$2,500.00. The tenants paid a \$1,250.00 security deposit of which the landlord holds in trust pending the outcome of this application. Copies of written tenancy agreements were in evidence.

In respect of this application, the landlord seeks \$930.00 in compensation for (1) a damaged balcony window screen (\$210.00), (2) replacement walls for toilet (\$180.00), (3) cost to discard garbage left by the tenants (\$280.00), (4) replacement cost for a strata community club fob (\$50.00), and (5) floor feet line repairs, windowsill, and balcony repairs (\$210.00).

Copies of receipts for items one and five were submitted into evidence, and the landlord testified under oath that the amounts claimed for the remaining items were truthful and accurate. Also submitted into evidence were thirteen colour photographs depicting various areas of the inside of the rental unit.

### Analysis

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 their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

Based on the undisputed oral and photographic documentary evidence before me, including the photographs, I am persuaded on a balance of probabilities that the tenants breached section 37(2) of the Act by both damaging the rental unit and by leaving a fair amount of garbage behind. It is also my finding that the landlord suffered monetary losses as a result of the tenants' breach of the Act.

As such, taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$930.00. The tenants are therefore ordered to pay this amount pursuant to section 67 of the Act.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee, for a total award of \$1,030.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I authorize the landlord to retain \$1,030.00 of the tenants’ security deposit in full satisfaction of the above-noted award.

The landlord is ordered to return the balance of the security deposit (\$220.00) to the tenants within 15 days of receiving a copy of this decision.

### Conclusion

**The application is granted.**

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: March 15, 2022

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Residential Tenancy Branch