



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-S, MNRL-S

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 21, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- 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 and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 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.

### Preliminary Matters

According to Section 59 (2) An application for dispute resolution must;

(a) be in the applicable approved form,

(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings**, and

(c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

(5) **The director may refuse to accept an application for dispute resolution if**

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

(b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or

**(c) the application does not comply with subsection (2).**

I find that proceeding with the Landlord's monetary claim for damage at this hearing would be prejudicial to the Tenants, as the absence of particulars that set out how the Landlord arrived at the amount of \$2,500.00 for repairs and cleaning makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the Landlord's claim. The Landlord failed to specify a detailed breakdown of their monetary claim relating to damage and cleaning including the amount of each item and what each item being claimed.

For this reason, the Landlord's monetary claim for damage is dismissed with leave to reapply. The Landlord did include a monetary order worksheet containing claims for unpaid rent and utilities. The hearing continued based on these claims.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent and utilities, 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 March 10, 2015. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$2,767.50 which was due on the first day of each month. The Tenants paid a security

deposit and a pet damage deposit each in the amount of \$1,250.00 for a total of \$2,500.00 currently being held by the Landlord.

The Landlord is claiming \$967.50 for unpaid rent. The parties agreed that the Tenants entered into one tenancy agreement with the Landlord to rent the entire rental unit. The parties agreed that the Tenants had a sublease with sub tenants who occupied the basement of the rental unit. The Tenants collected a portion of rent from the sub tenants each month. The Tenants would then pay the full amount of rent to the Landlord each month.

The parties agreed that the Tenants provided the Landlord with notice to end tenancy effective August 31, 2021 for the entire rental property. The parties agreed that the Tenants vacated the upper portion of the rental unit, while their sub tenants continued to occupy the basement of the rental unit until September 30, 2021. The parties agreed that the sub tenants gave the Tenants' Landlord \$1,800.00 which has been their portion of the rent they provided to the Tenants each month during the tenancy.

The Landlord is claiming for the remaining balance of \$967.50 of unpaid rent for September 2021. The Tenants stated that the Landlord had agreed to accepting \$1,800.00 from the sub tenants and that the Landlord benefitted from having the upstairs of the rental unit vacant so that he could conduct repairs in preparation for the sale of the rental property.

The Landlord is claiming \$92.52 in relation to an unpaid utility bill for the month of September 2021 during which the sub tenants overheld the rental unit. The Tenants stated that the utilities were included in the rent each month. The Landlord did not provide a copy of the utility bill.

### 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.

The Landlord is claiming \$967.50 for unpaid rent for September 2021. In this case, I accept that the Tenants provided the Landlord with their notice to end tenancy for August 31, 2021. I accept that the Tenants' had sub tenants who overheld the rental unit until September 30, 2021. I find that it was the Tenants' responsibility to provide vacant possession of the entire rental unit to the Landlord on August 31, 2021.

I find that the Tenants provided insufficient evidence to demonstrate that the Landlord commenced a new tenancy with the sub tenants, agreeing to only accepting \$1,800.00 rather than the full amount of rent which had been owed in the amount of \$2,767.50 during the tenancy. The fact that the sub tenants overheld the tenancy until September 30, 2021 and paid the Tenants' Landlord \$1,800.00 resulted in the Landlord incurring a loss and is therefore entitled to compensation in the amount of **\$967.50**.

The Landlord is claiming \$92.52 in relation to an unpaid utility bill for the month of September during which the sub tenants overheld the rental unit. In this case, I find that the Landlord provided insufficient evidence to confirm the value of his loss, such as a copy of the utility bill to confirm the amount owed. As such, I 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 \$1,067.50 from the \$2,500.00 in deposits held in satisfaction of the claim ( $\$2,500.00 - \$1,067.50 = \$1,432.50$ )

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,432.50, which represents the remaining balance of their deposits less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$1,067.50 which has been deducted from the Tenants' deposits. The Tenants are granted a monetary order in the amount of \$1,432.50 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: March 3, 2022

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Residential Tenancy Branch