



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 30 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agents who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord submits that they served the tenant with the notice of hearing and evidence by registered mail sent on December 7, 2021 to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on May 22, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The hearing record shows that the Branch, on its own initiative, rescheduled the hearing and issued a new notice of hearing to all of the parties by email on June 10, 2022. The landlord confirmed receipt of the rescheduled notice and gave evidence they forwarded

the email to the tenant as well. Based on the undisputed evidence I find the tenant sufficiently served in accordance with section 71 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to the relief sought?

### Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This tenancy began in December 2020. Monthly rent was \$2,125.00 payable on the first of each month. A security deposit of \$1,062.50 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit rental building.

The tenancy ended on November 19, 2021 with the parties preparing a move-out condition inspection report on that date. The tenants gave written authorization that the landlord may retain the full amount of the deposit and confirmed they were responsible for a payment of \$20,617.78 for various damage to the rental property. The tenant provided a forwarding address on the inspection report of November 19, 2021.

The landlord submits that the tenant drove their vehicle through the parking garage gates causing massive damage requiring emergency repairs, security to safeguard the property and other associated costs. The landlord submitted into evidence copies of invoices and receipts for their losses totalling \$21,830.28.

The landlord testified that they have received a payment of \$17,933.88 from the tenant's insurance and now seek a monetary award for the outstanding balance of \$3,896.40.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the landlord that the tenant drove their vehicle through the closed parkade gate causing considerable damage and losses. I accept the evidence that the total amount of their losses was \$21,830.28. I further accept the evidence that the tenant acknowledge they were liable for the damage and gave written authorization that the landlord may retain the full amount of the security deposit for this tenancy. I accept the testimony of the landlord that they have received partial payment and the balance of the claim is \$3,896.40.

Accordingly, I issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,933.90, representing the outstanding losses, recovery of the filing fee and authorization to retain the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: August 12, 2022

---

Residential Tenancy Branch