



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

1. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
2. An Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord testified that she served the Tenants with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on April 29, 2022 by email (the “NoDRP package”). An email address for service for both parties was provided in form #RTB-51 on August 23, 2021. Section 43(1) of the *Residential Tenancy Regulation* allows service via email if an email address was provided for this purpose. Policy guideline number 12 says that by providing an email address for service purposes, a person agrees that important documents pertaining to their tenancy may be served on them by email. The Landlord uploaded the sent email with all the attached documents attesting to service by email. I find that the Tenants were deemed served with the NoDRP package on May 2, 2022 in accordance with Sections 43 and 44 of the Regulation.

### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. Is the Landlord entitled to an Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
4. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term was to end on July 1, 2022. Monthly rent was \$1,700.00 payable on the first day of each month. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord was granted an Order of Possession and a Monetary Order for August’s rent and the application filing fee in the amount \$1,800.00 by direct request on October 14, 2021. The Landlord testified that the Tenants vacated the rental unit on about October 28, 2021, but they did not pay September or October 2021’s rent. The Landlord seeks \$3,400.00 for the unpaid rent for those two months.

The uploaded tenancy agreement shows that the Tenants were responsible for 50% of the heating and electricity costs for the rental unit. The Landlord uploaded gas and hydro bills demonstrating the total costs of those bills. The Landlord allocated proportionate amounts totalling \$232.92 for these services used by the Tenants up to when they vacated the rental unit. The Landlord seeks compensation for these unpaid bills.

The Landlord used the services of a bailiff to evict the Tenants from the rental unit. The Landlord uploaded receipts and invoices demonstrating the expenses incurred for the bailiff services. The Landlord seeks compensation totalling \$5,105.16 to cover the bailiff services.

The Landlord seeks compensation for damage done to the master bedroom door, the master bedroom door frame, the frame around the second bedroom door, and a cracked washbasin in the bathroom of the rental unit by the Tenants. The Landlord uploaded pictures of the damaged doors and washbasin. The Landlord also uploaded the move-in condition inspection report which does not specify that the doors, door frames and washbasin were damaged at move-in. The Landlord seeks \$929.42 to cover the costs for these damaged items and their reinstallation.

### 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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord

complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants eventually left the rental unit on October 28, 2021 after a bailiff eviction. In a previous file (file number is noted on the cover sheet of this decision), the adjudicator accepted that the tenancy ended pursuant to a 10 day notice on the corrected effective date of September 3, 2021. I find the Landlord is entitled to rent for September and October 2021 during the period where the previous tenants overheld the rental unit pursuant to Section 57(3) of the Act. I grant the Landlord **\$3,400.00** representing the rent amount during the overholding period.

As the tenancy agreement stated that the Tenants are responsible for 50% of the heat and electricity costs, I find the Landlord is entitled to **\$232.92** which covers the heat and electricity expenses during the period the previous Tenants overheld the rental unit.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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."* This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

During the tenancy period, the Tenants caused damage to the master bedroom door and door frame. The Tenants also left damage to the second bedroom door frame and a cracked washbasin in the bathroom. The Landlord uploaded pictures of all the damage for which she is seeking compensation. I find this damage is more than reasonable wear and tear.

The Landlord uploaded documentary evidence of the amounts to replace and reinstall the master bedroom door, door frame, the second bedroom door frame and the washbasin. The Landlord went to extraordinary measures to regain possession of her rental home and I find acted reasonably to minimize the damage or loss. I find the Landlord has proven on a balance of probabilities that the Tenants are responsible for the damage to the rental unit and I award her compensation totalling **\$929.42** for the damaged items.

The Landlord incurred costs when using the services of a bailiff to regain possession of her rental unit. The Landlord provided documentary evidence specifying the cost of this service. I find the Landlord is entitled to be reimbursed for this expense totalling **\$5,105.16**.

Section 7 of the Act sets out the liability of the Landlords or Tenants for not complying with the Act, Regulation or tenancy agreement. I find the Tenants must compensate the Landlord for the damage and repair costs caused by the Tenants' actions, and for the needed bailiff services after serving the Order of Possession on the Tenants.

I find the Landlord is entitled to recover the application filing fee paid to start this application. I order that the security deposit may be deducted from the total compensation owing to the Landlord pursuant to Section 72(2)(b) of the Act. According to Section 67 of the Act, I grant the Landlord a Monetary Award calculated as follows:

#### Monetary Award

<b>COMPENSATION CLAIMS</b>	<b>Amount</b>
Unpaid rent - September & October 2021	\$3,400.00
Unpaid utilities (50% of total)	\$232.92
Damage to rental unit	\$929.42
Bailiff costs	\$5,105.16
Less Security Deposit:	-\$850.00
Plus Application Filing Fee:	\$100.00
<b>TOTAL MONETARY AWARD:</b>	<b>\$8,917.50</b>

Conclusion

I grant the Landlord a Monetary Order in the amount of \$8,917.50, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: December 29, 2022

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Residential Tenancy Branch