



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MNDL-S, MNDCL-S, FFL  
Tenants: MNRT, MNSD, RPP, FFT

### Introduction

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

- a Monetary Order of \$1,425.00 for damage that the Tenants, their pets or their guests caused during the tenancy pursuant to sections 32 and 67;
- a Monetary Order of \$20,896.16 as compensation for monetary loss or other money owed pursuant to section 67;
- authorization to retain the Tenants' security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for the Landlord's application from the Tenants pursuant to section 72(1).

This hearing also dealt with the Tenants' cross-application under the Act for:

- a Monetary Order of \$15,000.00 for the cost of emergency repairs that the Tenants made during the tenancy pursuant to section 33;
- recovery of all of the Tenants' security deposit and/or pet damage deposit pursuant to section 38;
- an order for the Landlord to return the Tenants' personal property seized or received by the Landlord contrary to the Act or the tenancy agreement pursuant to section 65(1)(e);
- authorization to recover the filing fee for the Tenants' application from the Landlord pursuant to section 72(1).

The Landlord, the Landlord's agent and interpreter VY, and one of the Tenants, PS, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

#### Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to the service of documents. The Landlord acknowledged receipt of the Tenants’ notice of dispute resolution proceeding package and evidence (the “Tenants’ NDRP Package”). PS acknowledged receipt of the Landlord’s notice of dispute resolution proceeding package and evidence (the “Landlord’s NDRP Package”). Based on the foregoing, I find the Landlord was served with the Tenants’ NDRP Package in accordance with sections 88 and 89 of the Act. I find the Tenants were served with the Landlord’s NDRP Package in accordance with sections 88 and 89 of the Act.

#### Preliminary Matter – Clarification of the Landlord’s Claim

VY confirmed that the Landlord is claiming \$20,896.16, which was the cost for disposing the Tenants’ belongings due to a fire caused by the Tenants. I find the Landlord is seeking to retain the Tenants’ security deposit in the amount of \$1,425.00 as part of that claim, not as separate monetary amount. As such, I will consider the Landlord’s monetary claims for damage and for monetary loss or other money owed together as one issue.

#### Issues to be Decided

1. Is the Landlord entitled to:
  - a. compensation of \$20,896.16 for damage that the Tenants, their pets, or their guests caused during the tenancy, or for monetary loss or other money owed?
  - b. retain the Tenants’ security deposit of \$1,425.00?
  - c. recover the filing fee for the Landlord’s application?
2. Are the Tenants entitled to:
  - a. compensation of \$15,000.00 for the cost of emergency repairs made during the tenancy?
  - b. recover the security deposit?

- c. return of the Tenants' personal property seized or received by the Landlord contrary to the Act or the tenancy agreement?
- d. recover the filing fee for the Tenants' application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on October 1, 2019 and ended on June 20, 2021. Rent was \$2,850.00 per month. The Tenants paid a security deposit of \$1,425.00.

The rental unit was a standalone house originally built in the 1950s. On June 20, 2021, a fire broke out at the rental unit, rendering the rental unit uninhabitable and frustrating the tenancy.

During this hearing, VY translated for the Landlord and made submissions on the Landlord's behalf.

VY submitted that the Landlord seeks to recover content disposal fees incurred by the Landlord due to the Tenants having caused the fire. VY confirmed that the Landlord's insurance paid to have the house repaired, but did not cover the costs for removing the materials contaminated with asbestos. VY testified that the Landlord had to pay the fees in advance so that the cleaning and other remediation work could proceed. VY confirmed that the invoice for such costs were initially \$20,896.16, and the final costs were \$28,537.58. VY confirmed the Landlord had not amended this application to reflect this increased amount and agreed to abandon any amount in excess of the \$20,896.16 claimed.

VY testified it did not appear that the fire was caused by the house itself. VY testified the Landlord heard from occupants living on the lower floor of the rental unit that the fire was caused by the Tenants' barbeque. VY testified that those occupants had not been approved in advance by the Landlord and the Landlord did not know their names. VY testified that the Landlord was told there had been a barbeque in the backyard on the day of the fire. The propane for the barbeque was not turned off and the fire was not completely put out. VY stated that the Landlord was told the fire then went into the

house. VY stated the Landlord was unsure whether it was the Tenants or the occupants who were involved with the barbeque.

VY stated that the Landlord had hired a property manager to make sure everything was in working order and met the requirements for habitation before the Tenants moved in. VY testified that the property manager did a walkthrough with the Tenants and had the Landlord fix an electricity issue before the Tenants moved in. VY stated that the Landlord did not believe the fire was caused by the weather, since it happened at night rather than during the day. VY stated the Landlord believes it would be impossible for the house to catch on fire just like that. VY testified there were some small plumbing and water-related fixes required during the tenancy which the Landlord had attended to immediately.

VY stated the Landlord had reminded the Tenants multiple times to obtain tenant's insurance, but the Tenants did not do so.

VY testified that when PS wanted to retrieve his personal belongings, it was not safe for anyone to enter the site. VY testified that the engineer's authorization was needed to enter and that it was not the Landlord's decision to make. VY testified the Tenants were given permission sometime last year to retrieve items which had not been contaminated.

The Landlord submitted the additional documents into evidence, including:

- photographs of the rental unit following the fire
- building fire field report dated June 20, 2021
- municipal fire department incident details report dated June 20, 2021
- site inspection reports from a structural consultant company dated June 22, 2021
- an invoice from a property restoration company dated January 14, 2022 in the amount of \$20,896.16
- an updated invoice from the same property restoration company dated May 19, 2022 in the amount of \$28,537.58 for content disposal, with cost breakdown and waste disposal invoices dated December 21, 2021 and January 5, 2022
- bulk sample asbestos identification results dated June 30, 2022 from an asbestos analysis company
- contact information for insurance adjuster, municipal emergency support services, and unnamed occupants of rental unit

PS testified that he was sleeping when the fire broke out at around 2:00 am. PS stated his friends were sleeping in the living room at the time. PS stated that the fire started from the laundry room in the basement area. PS testified there was smoke everywhere and he was unable to put out the fire, so he went to the backyard.

PS acknowledged that he did barbeque every two weeks. PS testified that he was out for camping on the day of the fire, then had friends over after 9:00 pm. PS testified that he did not use the laundry room at night. PS stated the laundry room was a storage room or shed structure which was detached from the house. PS stated he had a propane barbeque on the patio, and another charcoal barbeque in the storage room. PS testified that no one was using the barbeque at the time of the fire.

PS testified that the fire was put out by around 7:00 am the next day. PS stated that he lived in a hotel for a couple of days after the fire.

PS argued that the Tenants should get their security deposit back because the fire could have been due to a problem with the house. PS testified that the fire department report could not find any reason for the cause of the fire. PS stated that when the fire broke out, it was the beginning of a heat wave and was super hot.

PC stated that after the fire, the property was fenced, there was a security guard, and no one was allowed in. PS testified that he asked to retrieve his belongings and was told by the Landlord to call the Landlord's insurance agent. PS testified he was told that it was unsafe to go onto the site. PS stated he was eventually allowed to go in for one hour to retrieve his belongings. PS testified he threw his belongings into the backyard and brought his car, but the door was already locked and he was not able to take anything. PS testified he still had other items in the shed which he was not allowed to remove. PS stated that after one month, security was not there anymore, and his belongings were in the backyard unsecured. PS testified that after several months, he was told to remove his belongings, but there were no more items left at that point.

PS stated he did not have tenant's insurance and lost his belongings. PS stated he wants to recover the security deposit, ten day's rent, and damage to his personal property caused by flooding in the rental unit in January 2020. PS testified there was a flood in the basement which damaged his tools. PS testified that his bedroom carpet and other items, including a couch and tv stand, were also wet. PS stated that it took a long time for the house to dry.

The Tenants submitted the following into evidence:

- photographs of water damage in the rental unit
- copies of rent cheques paid to the Landlord from November 2020 to June 2021
- email and text correspondence between PC and the Landlord's restoration contract and insurance adjuster

### Analysis

*1(a). Is the Landlord entitled to compensation of \$20,896.16 for damage, monetary loss, or other money owed?*

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32(3) of the Act states that 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".

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states that "[i]t is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This means that the Landlord bears the onus of proof for this claim.

For the reasons given below, I find I am unable to conclude that more likely than not, the fire was caused by an act or omission of the Tenants or a person permitted onto the property by the Tenants.

I find that overall, there is insufficient evidence as to what caused the fire in the first place.

According to the building fire field report dated June 20, 2021 submitted into evidence by the Landlord, the investigator stated as follows under "Cause and Origin":

*NOT DONE BLD DEEMED NOT STRUCTURALLY SAFE TO DO SO*

In addition, the investigator wrote “UNKNOWN” for each of “igniting object”, “fuel or energy”, “material first ignited”, and “area/point of origin”. The investigator also wrote “UNKNOWN” for “possible sources of ignition” and “indicators and evidence”.

The investigator described the subsequent progression of fire as “FROM SHED UNDER PORCH AREA TO THE REST OF THE HOUSE”, and the factors to fire progression were “UNKNOWN FACTORS”.

I find that the municipal fire department reports submitted into evidence did not identify a possible cause for the fire either. I find the Landlord also did not commission any independent or expert reports to determine the cause of the fire.

Furthermore, I find there are no witness statements or direct testimony from the unnamed occupants who are said to have told the Landlord that the fire was caused by a barbeque. I note that the Landlord’s evidence on this point is hearsay. While hearsay may be admissible under section 75 of the Act, I do not find it to be particularly reliable in this case. I find the identity of the individuals who purportedly gave this information to the Landlord to be unknown. Furthermore, I find the Landlord is recounting verbal statements which would have been told to him more than one year ago. I find that I do not have an exact statement of what these individuals may have told the Landlord at that time.

I am sympathetic to the Landlord for the losses that he suffered. However, based on the evidence presented, I am unable to find that more likely than not, the fire was caused by the Tenants or a person permitted on the rental property by the Tenants. I am unable to conclude that the damages suffered by the Landlord in the form of content disposal fees were therefore caused by the Tenants’ breach of the Act, the regulations, or the parties’ tenancy agreement.

The Landlord’s claim for compensation is dismissed without leave to re-apply.

*1(b). Is the Landlord entitled to retain the Tenants’ security deposit of \$1,425.00?*

Having dismissed the Landlord’s monetary claim above, I find the tenancy has ended and the Landlord has not asserted any other basis for retaining the Tenants’ security

deposit of \$1,425.00. Accordingly, I order the Landlord to return the security deposit to the Tenants pursuant to section 65(1)(d) of the Act.

*1(c). Is the Landlord entitled to recover the Landlord's filing fee?*

The Landlord has not been successful in his application. I decline to grant the Landlord's claim for recovery of the filing fee under section 72(1) of the Act.

*2(a). Are the Tenants entitled to compensation of \$15,000.00 for emergency repairs?*

Section 33 of the Act states as follows regarding compensation for emergency repairs:

**Emergency repairs**

33(1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.



(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

(emphasis added)

In this case, I find the Tenants did not pay for any emergency repairs with respect to the flood that occurred in January 2020. I find the Tenants did not submit any receipts for emergency repairs in their application. I find PC did not provide any breakdown to explain how the Tenants arrived at the amount of \$15,000.00. I find PC described other monetary claims which are not stated as claims on the Tenants' application.

Accordingly, I dismiss the Tenants' claim under this part without leave to re-apply.

*2(b). Are the Tenants entitled to recover the security deposit?*

As noted above, I have already determined that the security deposit must be returned to the Tenants. I find it is not necessary to consider the Tenants' claim again under this part.

*2(c). Are the Tenants entitled to return of their personal property?*

Section 65(1)(e) of the Act states that “personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned”.

Based on the evidence presented, I find the Landlord did not seize or receive the Tenants’ personal property at all. I find the Tenants were simply unable to retrieve their personal property from the rental unit due to the fire and asbestos contamination rendering the site unsafe for entry. I accept the Landlord’s evidence that the matter was out of his hands. I find this position is supported by an email from the Landlord’s insurance adjuster to the Tenant dated September 15, 2021, in which the adjuster declines PS’s request to go into the property since the “structural engineer has advised that the roof is not structurally sound”. I find the adjuster informed PS that when “the building is safe to enter, [the Landlord’s restoration contractor] can discuss with [the Tenants] further regarding access”.

In any event, I find there is no evidence to suggest that the Tenants’ personal items still exist or are otherwise recoverable at this point.

I conclude the Tenants are not entitled to an order for the Landlord to return their personal property. The Tenants’ claim under this part is dismissed without leave to re-apply.

*2(d). Are the Tenants entitled to recover the Tenants’ filing fee?*

The Tenants have been partially successful in their application. I grant the Tenants’ claim for recovery of their 50% filing fee under section 72(1) of the Act.

Conclusion

The Landlord’s application is dismissed in its entirety without leave to re-apply.

Pursuant to section 65(1)(d) of the Act, I order the Landlord to return the Tenants’ \$1,425.00 security deposit to the Tenants. Pursuant to section 72(1) of the Act, I order the Landlord to reimburse the Tenants for 50% of their filing fee, or \$50.00.

The Tenants are granted a Monetary Order of **\$1,475.00** for the total awarded in this decision. This Order may be served on the Landlord, filed in 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 *Residential Tenancy Act*.

Dated: December 09, 2022

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Residential Tenancy Branch