



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL; MNDCT, MNSD, FFT

### Introduction

This hearing dealt with the landlord's application, filed on May 9, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$1,550.00 for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' entire security deposit of \$1,550.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on June 16, 2022, pursuant to the *Act* for:

- a monetary order of \$1,930.51 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the tenants' security deposit of \$1,550.00, totalling \$3,100.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two tenants, "tenant SB" and "tenant VM," did not attend this hearing, which lasted approximately 48 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 2:18 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute

Resolution Proceeding (“NODRP”). I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed her name and spelling. She provided her email address for me to send a copy of this decision to her after the hearing. She stated that she owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord affirmed, under oath, that she would not record this hearing.

At the outset of this hearing, I explained the hearing process to the landlord. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

The landlord stated that her mother recently passed away, but she wanted to proceed with this hearing, and she was prepared to do so.

The landlord testified that the tenants were each served with separate copies of the landlord’s application for dispute resolution hearing package on May 20, 2022, both by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord’s application on May 25, 2022, five days after their registered mailings.

#### Preliminary Issue – Dismissal of Tenants’ Application

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants’ application.

Rule 7.3 of the RTB *Rules* states the following:

*7.3 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.*

In the absence of any appearance by the two applicant tenants, I order the tenants' entire application dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for her application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord stated the following facts. This tenancy began on December 5, 2020 and ended on April 30, 2022. Monthly rent in the amount of \$3,145.00 was payable on the first day of each month. A security deposit of \$1,550.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenants provided a written forwarding address to the landlord, by email, three months before they moved out. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenants did not provide written permission for the landlord to retain any amount from their security deposit.

The landlord confirmed that she seeks to retain the tenants' entire security deposit of \$1,550.00, in full satisfaction of her monetary claim for damages, plus the \$100.00 application filing fee.

The landlord testified regarding the following facts. It was difficult to deal with the tenants. She tried to make it right for the tenants and fix what was needed with the COVID restrictions. She signed information for the tenants, saying that they paid rent on time, so that the tenants' employer would pay rent on their behalf. The landlord and her children had COVID. She is a single mom. The tenants told her that they bought a place and they gave notice to leave for April 30. She could not afford the rental unit on her own. The realtor did an inspection with the landlord. The tenants did not hire

cleaners, as they said they did. There was paint all over the floors and the curtain rods. She renovated the rental unit in 2019 and gutted everything, which was new, except for the fireplace, which worked. The stove top and towel rack were damaged. The realtor said she had never seen a place left like that in 30 years of her experience. The landlord paid someone to clean. She sent pictures to the tenants, and she even got the tenants a refund for the cleaning that they said they did. It was almost \$1,600.00 for damages. She offered to return the tenants' security deposit if they agreed not to file a counter dispute against her. She talked to the RTB and they told her that she needed to file an application to keep the tenants' security deposit. She did not want to file her application. She has no money and is on disability with 2 kids and she rents. She was renting out the rental unit for her mother and provided a \$100.00 discount to the tenants. The rental unit paid for the landlord's mom's fees for long-term care expenses. This is a shame, and the landlord wishes that she did not have to do this. The tenants took advantage of the landlord. The landlord dealt with tenant SB, not tenant VM. She was shocked by how the tenants left the rental unit. The appliances were new in 2019 and looked brand new when the tenants moved in. The tenants had an attitude of not accepting packages and used the landlord. The landlord tried to work out the issues with the tenants.

### Analysis

#### *Burden of Proof*

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove her application and monetary claims. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines requires the landlord to provide evidence of her claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. She testified that she served her application to the tenants, as required. She confirmed that she received the tenants' application. The landlord received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing her application and receiving the tenants' application. These documents contain the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. I informed the landlord that I had 30 days to issue a written decision to both parties after this hearing.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of her claims, since she chose to file her application on her own accord.

### *Legislation, Policy Guidelines, and Rules*

The following RTB *Rules* are applicable and state the following, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

#### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

### *7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

### *C. COMPENSATION*

*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.** In order to determine whether compensation is due, the arbitrator may determine 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.*

...

### *D. AMOUNT OF COMPENSATION*

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the *Act*, regulation or tenancy agreement or (if applicable) the amount of money the *Act* says the non-compliant party has to pay. The amount*

*arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

### Findings

I find that the landlord did not properly present her application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord failed to properly review and explain her claims and the documents she submitted in support of her application.

This hearing lasted 48 minutes and only the landlord attended, not the tenants. The landlord had ample time and opportunity to present her application and evidence. I repeatedly asked the landlord if she had any other information to present.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for damages of \$1,550.00, without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlord did not even mention the above amount of \$1,550.00, until I specifically asked her about it, during this hearing. She referenced that there was "almost \$1,600.00" in damages during her testimony.

The landlord failed to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. Therefore, I cannot determine what damages, if any, were present when the tenants moved in, and what damages, if any were caused by the tenants during their tenancy.

I find that the landlord failed to provide sufficient evidence of cleaning or damages beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1. The landlord failed to sufficiently explain these claims during her testimony and failed to reference her documents in support of same.

The landlord submitted numerous documents with her application but failed to review or explain them in sufficient detail during this hearing. The landlord did not point me to specific documents, page numbers, provisions, or other details, during this hearing.

The landlord provided an invoice, dated May 8, 2022, for \$1,589.00 with a balance due. The landlord did not reference or explain this invoice during this hearing. She did not testify as to how, when or if she paid for this invoice. The invoice is not signed by anyone. It does not state the rental unit address, indicating where any repairs or cleaning were completed. The invoice states the company's address and the landlord's address only.

The landlord provided a receipt, dated May 14, 2022. The landlord did not reference or explain this receipt during this hearing. The receipt is not signed by anyone. It does not state the rental unit address, indicating where any repairs or cleaning were done. It does not state the company name or the person receiving the payment or what the payment is for. It simply says "Thank you! Paid in cash" on the signature line. On the right side of the receipt it says "\$1589.00." In the middle of the receipt it says "one thousand five hundred and nine." The two numbers of \$1,589.00 and \$1,509.00 are different. It is a standard receipt from a receipt book which can be purchased anywhere, and it is handwritten.

I find that the above documents are insufficient to prove that the landlord paid for damages of \$1,550.00, as requested in her application, or of \$1,509.00 or \$1,589.00, as noted in the above documents.

The landlord had ample time of over eight months, from filing her application on May 9, 2022, to this hearing date of January 19, 2023, to provide sufficient evidence of her monetary claims, but she failed to do so.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants.

### Security Deposit

I am required to deal with the tenants' security deposit because the landlord applied to retain it in the landlord's application, as per Residential Tenancy Policy Guideline 17.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the security deposit, within 15

days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on April 30, 2022. The tenants provided a written forwarding address to the landlord by email, three months prior to moving out, but the landlord did not provide a date. Email service is permitted by section 88 of the *Act* and section 43 of the *Regulation*. The landlord did not have written permission to retain any amount from the tenants' security deposit.

Although the landlord filed her application on May 9, 2022, which is within 15 days of April 30, 2022, I find that the landlord's right to claim against the tenants' security deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*.

I have dismissed the tenants' application above, which includes an application to recover double the value of their security deposit, for failure to attend this hearing. However, I find that the landlord legally cannot retain the tenants' security deposit, because her right to do so was extinguished first, as noted above. I am required to order the landlord to return double the amount of the tenants' security deposit to the tenants, as per Residential Tenancy Policy Guideline 17.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the amount of their security deposit of \$1,550.00, totalling \$3,100.00, from the landlord.

Interest is payable on the tenants' security deposit of \$1,550.00, during the period of this tenancy. No interest is payable for the years from 2020 to 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to 19, 2023, since the date of this hearing was January 19, 2023. Although the date of this decision is January 25, 2023, I find that this is not within the landlord's control, it is only within my control as to when this decision is completed. This results in \$1.57 interest on \$1,550.00 for 5.21% of the year based on the RTB online deposit interest calculator. Interest is

calculated based on the original amount of the security deposit of \$1,550.00, and is not doubled, as per Residential Tenancy Policy Guideline 17.

I find that the tenants are entitled to receive double the value of their security deposit of \$1,550.00, totalling \$3,100.00, plus \$1.57 in interest. The tenants are provided with a monetary order for \$3,101.57.

I am required to consider the doubling provision, despite dismissing the tenants' application above, since the tenants did not specifically waive their right to it, as per Residential Tenancy Policy Guideline 17.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenants' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$3,101.57 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: January 25, 2023

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Residential Tenancy Branch