



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on April 28, 2022, wherein the Landlords sought monetary compensation from the Tenant in the amount of \$3,300.00, authority to retain their security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for 1:30 p.m. on January 3, 2023. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:43 p.m. Additionally, 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord, R.P., testified that they served the Tenant with the Notice of Hearing and the Application on April 30, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of May 5, 2022 and I proceeded with the hearing in their absence.

The Landlords were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Landlords confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords' and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords recover the filing fee?
3. Should the Landlords be entitled to retain the Tenant's security deposit towards any amounts awarded?

#### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence before me and which indicated this tenancy began May 1, 2020. Monthly rent was initially \$900.00 and raised to \$1,000.00 and the Tenant paid a \$375.00 security deposit. The Landlords attended a prior hearing on April 21, 2022 at which time they obtained an Order of Possession of the rental unit. They were also awarded recovery of the filing fee and permitted to retain \$100.00 of the Tenant's \$375.00 security deposit such that they continue to hold the balance of \$275.00.

The Landlords claimed unpaid rent for March and April 2022 in the amount of \$2,000.00 as the Tenant failed to pay rent as required.

The Landlords also claimed the sum of \$1,200.00 for the cost to replace the windows broken by the Tenant, or persons associated with the Tenant. In support the Landlords provided photos of the broken windows as well as a police report regarding the incident. The Landlord R.P. confirmed that the \$1,200.00 was for used windows.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the Tenant was obligated to pay \$1,000.00 per month in rent. I accept the Landlords' evidence that the Tenant failed to pay rent for March and April 2022 such that I award the Landlord the sum of **\$2,000.00**.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the Landlords' evidence that the Tenant, or persons associated with the Tenant, broke windows at the rental unit. I find Tenant did not make the necessary repairs as required by the *Act*, and this has caused losses to the Landlords. I further find the Landlords mitigated their losses by sourcing out used windows, rather than new and as such I award them recovery of the **\$1,200.00** claimed.

As the Landlords have been successful with their claim I also award them recovery of the **\$100.00** filing fee for a total award of **\$3,300.00**.

I find the Landlords are entitled to retain the balance of the Tenant's security deposit in the amount of \$275.00 and I award the Landlords a Monetary Order for the balance due in the amount of **\$3,025.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlords claim is granted in full. The Landlords are entitled to retain the Tenant's security deposit towards the amount awarded and are granted a Monetary Order for the balance due.

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: February 02, 2023

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Residential Tenancy Branch