



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, MNDCL, FFL; MNETC, FFT

### Introduction

This hearing dealt with the landlord's application, filed on May 10, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$13,252.23 for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on February 23, 2023, pursuant to the *Act* for:

- a monetary order of \$38,400.00 for compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), and the landlord has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's translator ZB, the landlord's agent GT, the landlord's lawyer JA, and the two tenants, tenant CY ("tenant") and "tenant DS," attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 60 minutes from 1:30 p.m. to 2:30 p.m. The landlord's lawyer left the hearing from 1:57 p.m. to 2:03 p.m. to discuss hearing and settlement options with the landlord, her translator, and her agent.

All hearing participants confirmed their names and spelling. The landlord's lawyer and the tenant provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord confirmed that her translator, her agent, and her lawyer had permission to assist and represent her at this hearing. The landlord's lawyer identified herself as the primary speaker for the landlord.

The tenant identified himself as the primary speaker for both tenants. Tenant DS agreed to same.

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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given additional time during this hearing to speak privately with each other about hearing and settlement options. Both parties discussed settlement during this hearing but declined to settle.

I repeatedly cautioned the tenants that if I granted the landlord's full application, the tenants could be required to pay the landlords \$13,352,23, including the \$100.00 filing fee. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord, her translator, her agent, and her lawyer that if I dismissed the landlord's application without leave to reapply, the landlord could receive \$0. The landlord, her translator, her agent, and her lawyer repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

Preliminary Issue – Service of Documents and Amendment

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. The landlord's lawyer confirmed receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Both parties confirmed receipt of late evidence from the other party. Both parties agreed that they had an opportunity to review and respond to the other party's late evidence. Both parties affirmed that they did not object to me considering the other party's late evidence at the hearing or in my decision. Accordingly, I informed both parties that I would consider both parties' late evidence at the hearing and in my decision.

The landlord's lawyer and the landlord's agent agreed that the landlord would only pursue her monetary claim of \$13,352.23 total, including the \$100.00 filing fee, at this hearing. They agreed that the landlord did not file an amendment form, prior to this hearing, to increase the landlord's monetary claim to \$13,625.03, which is indicated in the landlord's monetary order worksheet submitted. They agreed that the landlord would abandon the higher amount and not reapply for this amount in the future, since I informed them that parties cannot split their claims as per Rule 2.9 of the *RTB Rules*. They agreed that the landlord did not want to withdraw her application and reapply for the higher amount at a later date, although she was offered the opportunity to do so. They agreed that the landlord wanted to proceed with this hearing and pursue the lower amount.

I did not amend the landlord's application to increase her monetary claim at this hearing. I find that the tenants would be prejudiced if the landlord pursued the higher monetary amount at this hearing. I find that the tenants did not have sufficient notice to prepare or respond. I find that the landlord did not apply for this amount, nor did she file an amendment form. The landlord had ample time of almost 2 months, from when she filed this application on May 10, 2023, to this hearing date of July 7, 2023, to file the amendment. The landlord had the benefit of a lawyer who provided legal advice. The landlord's agent also filed an amendment form on May 29, 2023, to change the landlord's address, so the landlord was aware of the amendment procedure and the paperwork to use.

### Preliminary Issue – Dismissal of Tenants' Application

Section 51(2) of the *Act* states the following, in part (my emphasis added):

*51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

**(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or**

**(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

As per the above, the tenants may only be entitled to compensation if steps have not been taken within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the notice.

I notified the tenants that their application under section 51 of the *Act* was premature, as they confirmed that they vacated the rental unit on November 6, 2022, and they filed this application on February 23, 2023, which is just over 3.5 months later. I informed them that they filed their application prior to any six-month period elapsing. I notified them that their application was dismissed with leave to reapply, except for the \$100.00 filing fee, which is dismissed without leave to reapply. They affirmed their understanding of same.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties 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.

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and ended on November 6, 2022. Monthly rent in the amount of \$3,200.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties. A security deposit of \$1,600.00 was paid by the tenants and the landlord returned the deposit in full to the tenants.

The landlord's agent testified regarding the following facts. This is "really straightforward." There were things for the owner to do before moving in. The landlord provided photographs of the damages and invoices. There were no tenants at the move-out inspection. She told the landlord not to return the tenants' security deposit but the landlord wanted to end the relationship nicely and return the security deposit, so she agreed it was ok.

The landlord's lawyer made the following submissions. She was hired not for the landlord's application, but to defend the tenants' application against the landlord. The tenants left the house in "shambles," it was dirty, and laundry and other items were left behind. The tenants had lots of plants, so there was soil and water when they left. The landlord provided evidence. There was food on the wall, drawings, carpet replacement, and cleaning of the carpet because the smell was so bad, and it was smoky. The stove had to be replaced because it smelled and it was dirty. The walls had stickers and painting was done. The tenants overhauled the unit. The landlord returned the security deposit and the lawyer asked her why and she said that she did not want to come to an RTB hearing. The tenants filed their application first, so the landlord responded with her own application.

The tenant testified regarding the following facts. The landlord's photographs were taken in late spring, as there are tulips and foliage in the photographs. There are no photographs of the painting done or the flooring replaced, there were just invoices. There was touch up work done, not a whole paint job. There are parts inside the stove, but the tenants cleaned the surfaces, they did not open the stove parts to clean. The landlord allowed them to stay until November 6, 2022. There was no evidence of the work that was done by the landlord. Laminate flooring is more expensive than carpet, but the landlord did not replace the carpet. The deck was like a "swamp" because it rained, there was foliage, and the tenants tried to mop, but it would not drain. The tenants agree to pay \$1,600.00 to the landlord to clean the carpets, touch up paint, removal of stickers from the walls, and the surfaces. This was the amount of their

security deposit which the landlord returned to them, but they are willing to pay this amount to the landlord now.

The landlord's agent stated the following facts in response. The tenants provided an email that they were moving out on November 6, 2022. The landlord was forced to accept whatever date the tenants said. The landlord did not give permission for them to move out later and she did not have a choice. The photographs were taken on the move-out date on November 6, 2022, and sent to the lawyer. The landlord does not have to provide photographs after work is done for repairs or replacement because it is "irrelevant." There was no crack in the roof and she sent someone to inspect the roof.

### 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 require the landlord to provide evidence of her monetary claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. She received a document entitled "Notice of Dispute Resolution Proceeding," dated May 15, 2023 ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into the hearing.

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

*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 and links to the RTB website and the *Rules* are provided in the same document.

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 this 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 this 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...*

The landlord attended this hearing with a translator, an agent, and her lawyer, who all spoke on her behalf. I find that the landlord did not sufficiently 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 sufficiently review and explain her claims and the documents submitted with her application.

This hearing lasted 60 minutes, so the landlord had ample time and opportunity to present her application and respond to the tenants' evidence. I repeatedly asked the landlord if she had any other information to add and if she wanted to respond to the tenant's submissions.

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

On a balance of probabilities and for the reasons stated below, I award the landlord \$1,600.00 total, which the tenants agreed to pay, during this hearing. The remainder of the landlord's application is dismissed 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 review any move-in or move-out condition inspection reports for this tenancy. Therefore, I cannot determine the condition of the rental unit and what damages, if any, were present when the tenants moved into the rental unit, and what damages if any, were present when the tenants moved out. I cannot determine if any damages were caused by the tenants, beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

The landlord did not sufficiently review or explain the documents she submitted, including any photographs, receipts, invoices, or estimates, during this hearing. The landlord did not point me to any page numbers, provisions, specific details, or information during this hearing. The landlord's agent claimed that everything was "straightforward."

The landlord did not review the monetary order worksheet she submitted, during this hearing. She did not reference any specific rent, damages, losses, or cleaning, and the amounts for same, during this hearing.

The landlord filed this application in response to the tenants' application. The landlord returned the tenants' entire security deposit of \$1,600.00, rather than filing an application to retain it for damages, losses, cleaning, or rent.

The landlord failed to sufficiently review, explain, and provide receipts to show if, when, or how she paid for any damages or cleaning, as per Residential Tenancy Policy Guideline 16 above.

The landlord had ample time of almost 2 months, from filing this application on May 10, 2023, to this hearing date of July 7, 2023, to provide the above evidence but failed to do so.

As the landlord was mainly unsuccessful in this application, except for the amount that the tenants agreed to pay, I find that she is not entitled to recover the \$100.00 filing fee from the tenants. This claim is also dismissed without leave to reapply.

### Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the tenants' application is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,600.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: July 14, 2023

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Residential Tenancy Branch