



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, FFL**

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 13, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid utilities;
- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the original hearing at the appointed date and time. At the start of the original hearing, the Landlord stated that he served the Notice of Hearing and evidence to the Tenant by email and also by leaving a copy at in the Tenant's mailbox. The Tenant stated that they did not receive these documents from the Landlord. The Tenant stated that they only received notification about the hearing from the Tenancy Branch.

The Tenant stated that he provided some evidence to the Tenancy Branch, however, did not serve a copy of the evidence to the Landlord. The hearing was subsequently adjourned to allow the parties to re-serve their respective documents to each other in accordance with the Rules of Procedure and the *Act*.

The reconvened hearing took place on September 5, 2023 and was attended by both parties. The Tenant confirmed receipt of the Landlord's Application and evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that they did not submit any evidence in response to the Application.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$1,400.00 which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 which the Landlord continues to hold. The tenancy ended on July 31, 2022.

The Landlord submitted a monetary order worksheet containing a list of their monetary claims. At the start of the hearing, the Tenant agreed to compensate the Landlord for the following claims; new deadbolt \$76.02, hydro bill \$60.47, hydro bill \$37.74, handy man bill for re-lock and dryer vent repair \$255.00, totalling **\$429.23**.

The Tenant disputed the remaining claims which have been outlined below;

The Landlord is claiming \$937.50 for repairs to the rental unit. The Landlord provided several pictures and an invoice which contained the list of items repaired, and their related charges;

The Landlord states that the Tenants misused the shower head, resulting in the water leaking onto the drywall which needed to be replaced at a cost of \$375.00. The Tenant

denied misusing the shower head and stated that the rental unit was in poor condition at the start of the tenancy.

The Landlord stated that the sink was damaged and needed a new drain and filter, costing \$150.00. The Tenant stated that the sink was in poor condition at the start of the tenancy.

The Landlord is claiming \$112.50 to re caulk the bathtub and to replace the shower head slider clamp. The Tenant denied that they caused the damage to the shower.

The Landlord is claiming \$75.00 to replace the toilet valve as the toilet was running every few minutes. The Tenant stated that they had reported the issue to the Landlord, who did not complete the repair.

The Landlord stated that the leaking shower damaged the drywall in a closet in the rental unit which also needed repairs at a cost of \$225.00. The Tenant denied that their actions caused damage in the closet.

The parties agreed that there was no condition inspection report completed at the start of the tenancy.

The Landlord is claiming \$200.00 for post construction clean up he completed following the repairs. The Tenant stated that he does not agree that the Tenants are responsible for the damage.

The Landlord referred to other damages found in the rental unit which he was not claiming for. As these other items were not included on the monetary order worksheet, they will not be considered in this decision.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 37(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.

According to Section 32 of the *Act*;

(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...

(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...

At the start of the hearing, the Tenant consented to compensating the Landlord for several items outlined above, amounting to **\$429.23**.

The Landlord is claiming \$937.50 for repairs to the rental unit.

The Landlord states that the Tenants misused the shower head, resulting in the water leaking onto the drywall which needed to be replaced at a cost of \$375.00. In this case, I find that the damaged drywall in the bathroom seemed to be closer to the toilet. The Tenant denied misusing the shower head. I find that the Landlord provided insufficient evidence to demonstrate that the damaged drywall was a result of the Tenants' actions or inactions. As such, I dismiss this claim without leave to reapply.

The Landlord stated that the sink was damaged and needed a new drain and filter, costing \$150.00. The Tenant stated that the sink was in poor condition at the start of the tenancy. I find that without a condition inspection report being completed at the start of the tenancy, it is difficult to compare the condition of the sink faucet before the tenancy, compared to after the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants caused damage to the faucet. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$112.50 to re caulk the bathtub and to replace the shower head slider clamp. The Tenant denied that they caused the damage in the shower. I find that the Landlord provided insufficient evidence to demonstrate that the Tenants caused damage to the tub or shower. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$75.00 to replace the toilet valve as the toilet was running every few minutes. The Tenants stated that they had reported the issue to the Landlord, who did not complete the repair. I find that it would be the Landlord's responsibility to repair and maintain the toilet. I therefore dismiss this claim without leave to reapply.

The Landlord stated that the leaking shower damaged the drywall in a closet in the rental unit which also needed repairs at a cost of \$225.00. The Tenant denied that their actions caused damage in the closet. Similar to the Landlord's claim for drywall damage in the bathroom, I find that the Landlord has provided insufficient evidence to demonstrate the cause of the water damage to the drywall. I find that the Landlord has

not demonstrated that the Tenants are responsible for this damage, therefore, I dismiss this claim without leave to reapply.

The Landlord is claiming \$200.00 for post construction clean up he completed on his own, following the repairs. After having found that the Landlord was not successful with their repair claims, I find that they are not entitled to the cleaning fee associated with the clean up after the repairs.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$529.23 from the \$700.00 security deposit held in satisfaction of the claim ( $\$700.00 - \$529.23 = \$170.77$ ).

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$170.77, which represents the remaining balance of their security deposit less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$529.23 which has been deducted from the security deposit. The Tenants are granted a monetary order in the amount of \$170.77 which represents the remaining balance of the Tenants' security deposit. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 5, 2023

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Residential Tenancy Branch