



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353806 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF; MNDC, MNSD

### Introduction

This hearing dealt with the landlord company's application against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits") in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application against both landlords, pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenants' deposits, pursuant to section 38.

The two tenants, male and female, did not attend this hearing, which lasted approximately 26 minutes. "Landlord RL," who was named as an individual respondent in the tenants' application, and "landlord SS," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord RL confirmed that he is the building manager for the rental property and landlord SS confirmed that she was the administrator, and that both had authority to represent the landlord company ("landlord") named in this application as agents at this hearing.

Landlord SS confirmed that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package on January 5, 2016, by

way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with its Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's Application on January 10, 2016, five days after their registered mailings.

### Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

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 tenants, I order the tenants' entire application dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for its Application?

### Background and Evidence

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

Landlord RL testified regarding the following facts. This tenancy began on September 1, 2014 with only the female tenant and the male tenant joined later in the last six months of the tenancy. The tenancy ended on November 30, 2015. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of

\$425.00 and a pet damage deposit of \$425.00 were paid by the tenants and the landlord continues to retain both deposits. A copy of the written tenancy agreement was provided for this hearing.

Landlord RL confirmed that move-in and move-out condition inspection reports were completed for this tenancy. He said that the tenants were only present during the move-in condition inspection, not the move-out condition inspection. He noted that the landlord provided two opportunities for the tenants to attend the move-out condition inspection, including providing a Residential Tenancy Branch ("RTB") form for a final opportunity. The landlord stated that a forwarding address was received from the tenants on December 23, 2015, during a previous RTB hearing.

The landlord seeks a monetary order of \$1,038.00 plus the \$50.00 filing fee. The landlord seeks \$108.00 for general cleaning and \$80.00 for garbage disposal, both completed at the end of this tenancy at the rental unit.

### Analysis

Section 26 of the *Act* requires the tenants to pay rent on the date indicated on the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$850.00 for November 2015. Rent is due on the first day of each month, as per the tenants' tenancy agreement. The tenants vacated the rental unit on November 30, 2015. Therefore, I find that the landlord is entitled to \$850.00 in rental arrears for November 2015.

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

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.

I award the landlord \$108.00 for general cleaning of the rental unit. The landlord provided an invoice, dated December 2, 2015, for the above amount, indicating that \$27.00 per hour was charged for four hours. The landlord stated that cleaning was required in the move-out condition inspection report and provided photographs of the dirty condition of the rental unit at the end of the tenancy. As per Residential Tenancy Policy Guideline 1, the tenants are required to maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit during the tenancy and the tenants are also “generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.” I find that the tenants did not fully abide by the above guideline at the end of this tenancy and that the above amount is reasonable for general cleaning.

I award the landlord \$80.00 for disposal of the tenants’ garbage and other items at the end of the tenancy. The landlord provided an invoice, dated December 1, 2015, for the above amount, indicating that \$40.00 per hour was charged for two hours. The landlord indicated that garbage disposal was required in the move-out condition inspection report and provided photographs of the items left behind at the rental unit at the end of the tenancy. As per Residential Tenancy Policy Guideline 1, “unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.” I find that the tenants did not fully abide by the above guideline at the end of this tenancy and that the above amount is reasonable for garbage disposal.

As the landlord was successful in its Application, I find that it is entitled to recover the \$50.00 filing fee from the tenants.

The landlord continues to hold the tenants’ deposits, totalling \$850.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants’ deposits of \$850.00, in partial satisfaction of the monetary award.

### Conclusion

I order the landlord to retain the tenants’ entire security and pet damage deposits, totalling \$850.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$238.00 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 tenants' entire 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: August 05, 2016

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Residential Tenancy Branch