



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, FF

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlords and to recover the filing fee.

The hearing was conducted by teleconference on March 7, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that the tenancy was to begin August 2, 2016. Monthly rent was payable in the amount of \$1,660.00.

The Tenant stated that she did not move into the rental unit as on the day she was to move in, she was informed by the Landlord that the rental unit was leaking. She stated that she paid the first month's rent in the amount of \$1,660.00 as well as the security deposit of \$830.00. She confirmed that both these sums were returned to her by the Landlords.

The Tenant submitted a Monetary Orders worksheet wherein she claimed the following:

Storage of 46 boxes for three days	\$72.00
August rent for new address	\$1,020.00
August car parking for new address	\$27.42
Security deposit at new address	\$912.50
Rent paid at subject rental unit	\$1,660.00
TOTAL	\$3,691.92

The Tenant stated that she sought the above compensation as she “lost her time and had to find another place to live”. She also stated that her new rent was more than the subject rental unit.

The Landlord P.C. also testified. He stated that the tenancy was to begin on August 2, 2016, but when he entered the rental unit he discovered that the flooring was significantly damaged due to water damage. He stated that he was very sorry, but the rental unit was not habitable as it required significant repairs and continues to be vacant as it is undergoing repairs.

P.C. confirmed that the Landlords returned the security deposit and rent paid for August 2016 to the Tenant as she was not able to move into the rental unit. He also stated that they were willing to reimburse the Tenant the \$72.00 in storage fees she incurred, as well as the \$100.00 filing fee.

### Analysis

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 Tenant has the burden of proof to prove her claim.

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.

After consideration of the evidence filed and the testimony of the parties I find as follows.

I accept the Landlords' evidence that the rental unit was not habitable and that this was not known to him until the day the tenancy was to begin. The parties agreed that the Landlords returned the funds paid to him such that the Tenant has already received compensation for the amounts she paid in respect of this tenancy.

I find that the expenses relating to her new tenancy, such as rent, parking and her security deposit, are not recoverable, as they are an inevitable cost of tenancy. The Tenant claimed she was forced to pay more for rent, however, I find she failed to submit sufficient evidence to support such a finding. Further, she failed to provide any evidence to show she took steps to minimize her loss. The Tenant bears the burden of proving her claim and I find she has failed to prove her losses in this regard.

I find that the Tenants' storage fees are recoverable as she was forced to store her items until she found alternate accommodation.

Notably, the Landlords agreed to reimburse the Tenant the cost of storage of her items for three days in the amount of \$72.00 as well as the filing fee of \$100.00. Accordingly, I grant the Tenant a Monetary Order in the amount of **\$172.00**. The Tenant must serve this Monetary Order on the Landlords and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Tenant is entitled to compensation for the cost of storing her items for three days in addition to recovery of the filing fee. The balance of the Tenants' claims are dismissed.

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: March 07, 2017

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Residential Tenancy Branch