



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:00 p.m. on June 11, 2018. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his 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 1:22 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 Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, service of the Landlord's hearing package was considered. The Landlord testified that he served the Tenant the Notice of Hearing and the Application on November 10, 2017 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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:

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 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 November 15 and I proceeded with the hearing in their absence.

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 Landlord/Tenant's 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.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began August 1, 2016. Monthly rent was payable in the amount of \$750.00. The Tenant paid a security deposit and pet damage deposit in the total amount of \$750.00.

The tenancy ended October 31, 2017. The Landlord testified that the Tenant failed to clean and repair the rental unit as required.

The Landlord sought the sum of \$1,985.00 for the following expenses incurred by the Landlord to repair the rental unit at the end of the tenancy:

Patch drywall and paint	\$500.00
Change lock as Tenant refused to return keys	\$80.00
Replace electrical receptacle as Tenant used a device which overheated and cause the plug to burn out	\$110.00
Replace screen door handle	\$90.00
Repair cabinet water damage	\$120.00

Replace bathroom sink	\$300.00
Clean curtains	\$25.00
Repair linoleum	\$125.00
Replace shelf in refrigerator	\$325.00
Dispose of Tenant's mattress	\$60.00
Repair to landscaping caused by Tenant's vehicle	\$50.00
Cleaning costs	\$200.00
<b>TOTAL CLAIMED</b>	<b>\$1,985.00</b>

The Landlord submitted in evidence photos of the damage caused by the Tenant as well as receipts for the amounts claimed.

### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [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 Landlord has 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.

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.

I find based on the undisputed testimony of the Landlord and the evidence filed that the Tenant failed to clean and repair the rental unit as required by the *Act*. I further find the Landlord incurred the expenses claimed to repair and clean the unit and is entitled to the compensation claimed.

### Conclusion

The Landlord is awarded monetary compensation in the amount of **\$2,085.00** for the following claimed expenses:

patch drywall and paint	\$500.00
change lock as Tenant refused to return keys	\$80.00
replace electrical receptacle	\$110.00
Replace screen door handle	\$90.00
Repair cabinet water damage	\$120.00
Replace bathroom sink	\$300.00
Clean curtains	\$25.00
Repair linoleum	\$125.00
Replace shelf in refrigerator	\$325.00

Dispose of Tenant's mattress	\$60.00
Repair to landscaping caused by Tenant's vehicle	\$50.00
Cleaning costs	\$200.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$2,085.00</b>

I authorize the Landlord to retain the Tenants \$750.00 security deposit towards the amounts claimed and I grant him a Monetary Order for the balance due in the amount of **\$1,335.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: June 15, 2018

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Residential Tenancy Branch