



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S, MNRL-S

### Introduction

This hearing dealt with the landlord's application 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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 15, 2015 and ended on April 1, 2018. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$800.00 security deposit. The landlord testified that written condition inspection reports were conducted at move in and moves out. The landlord testified that the tenant moved into a brand new suite. The landlord testified that the tenant left the suite dirty and damaged, left garbage

behind, and required painting. The landlord testified that the tenant was given plenty of notice and guidance as to what was required to clean prior to the move out inspection. The landlord testified that the tenant did not offer any alternatives to the cleaning or repairs. The landlord testified that she is seeking a monetary order to recover the following costs.

The landlord is applying for the following:

1.	Cleaning, Repairs, painting, disposal of garbage	\$6470.70
2.	Utility Bill	93.60
3.	March Rent	1700.00
4.	Late Fee	25.00
5.	Filing Fee	100.00
6.	Minus Deposit	-800.00
	Total	<b>\$7589.30</b>

The tenant gave the following testimony. The tenant testified that that she agrees with the utility bill, unpaid rent and late fee. The tenant testified that she agrees somewhat to some of the landlords claim but questions the amounts as claimed. The tenant testified that she wasn't given an opportunity to do additional cleaning or able to have her own tradesmen address the issue. The tenant questions the authenticity of the landlords invoice.

### Analysis

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

It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers' to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming

to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

### **3.7 Evidence must be organized, clear and legible**

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Rent, late fee, utility bill – \$1818.60

The tenant accepts responsibility for these costs, accordingly; I find that the landlord is entitled to \$1818.60.

Cleaning, Repairs, painting, disposal of garbage - \$6470.70

The landlord testified that her husband has a construction company and that his employees conducted the work. The landlord testified that she does concede and acknowledge that the rate they charge is higher than normal for much of the work but time was limited and they wanted to conduct the work as soon as possible. The

landlord testified that the tenant left the unit dirty and damaged and should be held responsible for the costs or a percentage of the costs as the court sees fit.

The tenant questions the authenticity of the costs as claimed. The tenant testified that the landlords own the company and could have put any amount on the bill they choose. The tenant did not dispute the condition of the unit at the end of the tenancy as depicted in the landlords' photos.

The landlord provided an extensive amount of photos of the unit at move out. Many of the photos were extreme close ups of a very small portion of the unit. The landlord did not provide any photos of the unit post inspection. The landlord testified that she has numerous photos of the unit after the work was conducted but neglected to submit them for this hearing. I find that it would have been reasonable and logical for the landlord to provide those photos for this hearing especially since they used their own company to do the work, to substantiate the work and to remove any doubt as to the validity and authenticity of the invoice.

I find that the tenant raises a reasonable point as to whether the invoice is a true reflection of the work required, the cost to conduct the work and the amount of hours required. Residential Tenancy Policy Guideline 1 states a tenant must leave a unit reasonable clean at move out, I find that the tenant did not despite having been given an extra day to move out.

Based on the photos of the unit at move out and the tenants confirmation of the level of cleanliness, or lack thereof; I find that the 42 hours claimed by the landlord for cleaning is reasonable and appropriate. However, I do not agree with the \$58.50 an hour for cleaning as submitted. The landlord conceded that amount was excessive and invited me to provide a more "reasonable" amount. I find the appropriate amount is 42 hours at \$30.00 per hour = \$1260.00. The landlord is entitled to \$1260.00 for all cleaning.

In regards to the painting and repairs, the landlord did not provide sufficient evidence to support the amount as requested. The photos provided by the landlord do not support the scope of work and the amount as claimed. In addition, the invoice asks more questions than it answers. As noted above, to be successful for a monetary claim under section 67 of the Act, the applicant must satisfy all four factors. The landlord has not

provided sufficient supporting evidence to show what the actual cost of the repairs and painting were and what steps were taken to mitigate those costs, accordingly; I dismiss that portion of their claim.

The landlord is entitled to the recovery of the \$100.00 filing fee.

### Conclusion

In summary, the landlord has been successful in the following claims:

March Rent	\$1700.00
Late Fee	\$ 25.00
Cleaning	\$1260.00
Filing Fee	\$100.00
<b>Total:</b>	<b>\$3085.00</b>

I order that the landlord retain the \$800.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2285.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 05, 2018

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Residential Tenancy Branch