



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding  
Locke Property Mgmt  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFL, MNRL, MNDL, MNDCL**

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord's agent JV attended "the landlord". The landlord was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the landlord with an opportunity to ask questions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail send on July 8, 2020, thereby effecting service under section 90 five days later, that is, on July 13, 2020. The landlord provided the tracking number in support of service.

Further to the landlord's testimony, I found the landlord served the tenant with the documents as required under the *Act*.

### Introduction

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The tenancy began on August 1, 2018 for monthly rent of \$975.00 payable on the first of the month. The tenant provided a security deposit of \$487.500 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord testified that a condition inspection on moving in was conducted and signed by both parties; a copy of the report was submitted.

The landlord testified that that a condition inspection on moving out was scheduled by agreement at a certain time on the last day of the tenancy and the landlord issued a Final Notice to Attend, a copy of which was submitted; the landlord attended, and the tenant did not.

The tenant vacated the unit on June 30, 2020. The landlord completed the inspection report; a copy was submitted.

The inspection and the report on moving out indicated the unit needed general cleaning and painting. The tenant had smoked in the unit and the landlord testified that the unit had to be repainted. The tenant left utilities owing of \$32.56. The landlord testified the total cleaning and painting were done at a reasonable cost as indicated below. All receipts were submitted.

The landlord brought this application on July 6, 2020.

The landlord requested that the security deposit be applied to any monetary award and that he be granted reimbursement of the filing fee as follows:

ITEM	AMOUNT
Reimbursement of cleaning fees	\$238.88
Painting	\$787.50
Paint	\$170.07
Utilities outstanding	\$32.56

Reimbursement of filing fee	\$100.00
(Security deposit)	(\$487.50)
<b>Award Requested</b>	<b>\$841.51</b>

-  
Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred. The landlord submitted a well-prepared, organized and credible evidence package.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the tests are addressed below.

**1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?**

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the receipts, I find the tenant failed in the tenant's obligation under section 37(2) with respect to cleaning. I find the tenant smoked in the unit and painting was required. I find the tenant left outstanding utilities verified by the City utility bill.

I have considered the testimony and receipts submitted by the landlord and I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2).

-  
**2. Did the loss or damage result from non-compliance?**

-  
Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the receipts, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred the expenses claimed for cleaning but for the tenant's breach of their obligations.

***3, Has applicant proven amount or value of damage or loss?***

I find the landlord has established in the landlord's testimony and evidence that the landlord incurred the expenses claimed.

I find the landlord has met the burden of proof that the cleaning, painting and utility costs were as claimed and were reasonable expenses in the circumstances. I find the landlord has proven the amount of the claim.

Considering the above reasonable estimation and the invoices submitted, I find the landlord has met the burden of proof with respect to the amount of value of the damage or loss claimed.

***4. Has applicant done whatever is reasonable to minimize damage or loss?***

In considering the landlord's testimony, I find that they took reasonable steps to minimize the damage or loss.

I find the landlord made reasonable efforts to have these matters attended to in a cost and time efficient manner.

***Conclusion***

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order as follows:

ITEM	AMOUNT
Reimbursement of cleaning fees	\$238.88
Painting	\$787.50
Paint	\$170.07
Utilities outstanding	\$32.56
Reimbursement of filing fee	\$100.00
(Security deposit)	(\$487.50)
<b>AWARD</b>	<b>\$841.51</b>

#### Conclusion

I hereby grant the landlord a Monetary Order in the amount **\$841.51**. This Order must be served on the tenant. The Order may be filed and enforced as an Order of the Courts of the Province of British Columbia.

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 30, 2020

---

Residential Tenancy Branch