



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On January 30, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, damages and compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

Landlord S.B. and Tenant J.S. attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me and the Tenant acknowledged that she did not submit any documentary evidence for consideration.

### Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The two-year, fixed-term tenancy began on March 31, 2019. The rent was \$2,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$550.00.

The Landlord testified that the tenancy ended early as the Tenants failed to pay rent for January 2021. The Landlord issued a 10 Day Notice to End Tenancy and the Tenants moved out of the rental unit on January 17, 2021. The Landlord stated that the Tenants did not pay any rent for January 2021 and is claiming a loss of \$2,200.00.

The Landlord submitted a Condition Inspection Report and testified that a move-in inspection was conducted with Tenant J.S. on March 29, 2019 and a move-out inspection was conducted with both Tenants on January 17, 2021. The Landlord stated that the move-out inspection began with a walk-through of the rental unit and the documentation of damages; however, the Tenants left half-way through the inspection. The Tenants did not sign the move-out inspection report, did not provide a forwarding address, and did not provide any consent to deduct damages from the security deposit.

The Landlord submitted a Monetary Order Worksheet, evidentiary documentation including the Condition Inspection Report, and testimony to support their damages claim. The Landlord stated the pictures that were submitted as evidence were taken on the day of the move-out inspection:

- Damaged countertop in kitchen. The submitted picture showed a significant crack in the laminate. The Landlord stated the countertop was new at the beginning of the tenancy, the move-in Condition Inspection Report indicated the countertop was in good condition, and by the end of the tenancy, there was a crack the length of the counter; approximately 8 feet long. The Landlord provided a receipt to replace the counter and is claiming a loss of \$1,442.70.
- Damage to door. The Landlord submitted pictures of a screen door that showed that the door was damaged, obscenities written in red felt on bottom of the door and missing parts. The Landlord acknowledged that the door was approximately 8 years old at the beginning of the tenancy. The Landlord provided a receipt to replace the screen door and is claiming a loss of \$454.99.
- Damaged windows. The Landlord submitted pictures of a broken sidelight (beside door) and a smashed basement bathroom window. The Landlord testified that this was damage that occurred during the tenancy and that the

condition inspection report noted slight damage on a different window and that the broken windows had been in good condition at the beginning of the tenancy. The Landlord submitted a receipt and claimed the cost of the replacement windows and installation as a loss, in the amount of \$495.34.

- Painting. The Landlord stated the rental unit was newly painted when the Tenants moved in. At the end of the tenancy, many of the walls required repair and new paint. The Landlord submitted photos that showed stickers, holes, scuff marks and damaged drywall in the bedrooms, closets, hallway and one of the bathrooms. The Landlord submitted an invoice for the cost of painting the rental unit and is claiming that amount as a loss; \$4,372.25.
- Exterior clean-up. The Landlord stated that the Tenants failed to do any maintenance of the residential property and left behind garbage, wood, bricks and rebar that had to be removed. The Landlord testified that the yard had been landscaped, mowed, and edged upon the Tenants moving into the unit. Upon vacating the property, the property was overgrown and required significant maintenance. The Landlord acknowledged that there were no terms in the Tenancy Agreement that specifically addressed the Tenants' responsibility for yard maintenance. The Landlord submitted an invoice and is claiming the cost of the clean-up as a loss, in the amount of \$446.25.
- Damaged blinds. The Landlord testified that the blinds throughout the rental unit were new and in good condition upon the Tenants moving into the unit. The Landlord provided pictures to support his claim that most of the blinds were damaged at the end of the tenancy. The Landlord replaced 13 sets of blinds and is claiming the loss for the replacement cost and installation as noted in the submitted invoice, for a total of \$1,700.82.
- Damaged kitchen sink. The Landlord stated the faucet on the kitchen sink was loose and upon investigation, noted that the flanges of the sink had been damaged where the faucet had been installed. The Landlord submitted a video to show the damage and an invoice for the replacement cost of the sink. The Landlord is claiming a loss of \$171.15.
- Interior clean-up. The Landlord stated the Tenants failed to clean the rental unit properly and submitted pictures to show how garbage had been left in the bathroom and furnace room, that floors required further cleaning, and that the bathroom tub and tile surround required cleaning. The Landlord submitted an invoice for \$567.00.
- Broken Tiles. The Landlord submitted a claim for damaged tiles on the kitchen backsplash; however, withdrew the claim as he acknowledged that there were no pictures of the damage and that it was not noted on the move-out inspection report.
- Serving of Papers. The Landlord stated that the Tenants left the rental unit without providing a forwarding address. As the Tenants did not respond to the Landlord's attempts to contact them via email, the Landlord applied to the

Residential Tenancy Branch for a substituted service authorization and was declined. In order for the Landlord to proceed with this dispute process, the Landlord testified that he had to hire a process server to serve the Notice of Dispute Resolution Proceedings package to the Tenants. The Landlord submitted a receipt in the amount of \$325.00 and is claiming this amount in compensation.

The Tenant testified that they did not pay rent for January 2021 and does not dispute the Landlord's claim for unpaid rent.

The Tenant stated that both Tenants attended the move-out inspection with the Landlord on January 17, 2021 and didn't agree with the Landlords' assessment of damage, so left half-way through the inspection process.

The Tenant stated that she did not know how the counter broke and did not remember seeing the crack. The Tenant did not provide any further evidence regarding the Landlords' claim for the broken countertop.

The Tenant stated that the screen door was damaged when they moved in and that she cleaned off the graffiti before she vacated the rental unit. The Tenant did not provide any documentary evidence to support her claim that the door was damaged when they moved in or that she cleaned off the graffiti.

The Tenant stated that the windows had already been cracked and that the sidelight broke while closing the door and the bathroom window broke when closing the window. The Tenant said that they had originally proposed that they split the cost of replacing the windows but that the Landlords wanted them to pay the full amount.

The Tenant agreed that one of the bedrooms required repainting but didn't agree that the whole house needed to be repainted.

The Tenant stated that the living room blinds got stuck. The Tenant did not provide further submissions about the Landlords' claim for damaged blinds.

The Tenant stated that the faucet was just loose and needed to be retightened.

The Tenant stated that there was no mess and that she cleaned up the rental unit. The Tenant did not provide any documentary evidence to support her claim that the rental unit had been cleaned prior to vacating.

The Tenant agreed that they did not provide a forwarding address to the Landlords and by doing so, they basically agreed to forfeit their deposits to the Landlords.

### Analysis

*Residential Tenancy Policy Guideline 16* outlines the test to be applied in compensation claims and states:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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. In this case, the onus to prove their case is on the Landlords.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenants did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenants had a right under the Act to not pay the rent.

Taking into consideration all the testimony and documentary evidence presented before me, I find the Landlords have established a monetary claim for unpaid rent for January 2021, in the amount of \$2,200.00.

Section 32 of the Act sets out the responsibility of a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property. A tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

When considering the Landlords' claim for damages, I find that the Condition Inspection Report and the pictures that the Landlords have submitted are compelling evidence that, based on a balance of probabilities, support the Landlords' claim that the damages occurred during this tenancy. The Tenant did question the date of when the pictures were taken and I accept the Landlord's testimony that they were taken on the day of the move-out inspection, being January 17, 2021. The date stamp in the file name of the submitted pictures all indicate that they were taken on January 17, 2021, which further supports the Landlord's statement.

I make the following findings in relation to the Landlord's claim:

- Damaged countertop in kitchen. Based on the Landlord's testimony, the picture of the damage, the Condition Inspection Report and the Tenant's lack of evidence to the contrary, I find that the countertop was damaged during the tenancy and the Tenants failed to repair the damage, pursuant to section 32 of the Act. As a result, I find that the Landlord has established a monetary loss, pursuant to section 67 of the Act, in the amount of \$1,442.70.
- Damage to door. Based on the Landlord's testimony, the picture of the damage and the Condition Inspection Report, I find that the Landlord has established that the damage to the screen door occurred during the tenancy. I accept that the screen door was not new at the beginning of the tenancy and the Landlord now has a new screen door. To fairly compensate the Landlord and also acknowledge the wear and tear that can occur to a screen door during a tenancy, I award the Landlord half the claimed amount, for a total of \$227.50
- Damaged windows. Based on the Landlord's testimony, the pictures of the damage, the Condition Inspection Report and the Tenant's lack of evidence to the contrary, I find that the Landlord has established that the damage to the two broken windows occurred during the tenancy. I award the Landlord the claimed cost to replace and install the windows, in the amount of \$495.34.
- Painting. I accept the Landlord's undisputed testimony that the rental unit was freshly painted prior to the tenancy. This and the multiple pictures of the damaged walls, and the Condition Inspection Report provide strong evidence that the damage to the interior of the rental unit walls occurred during the tenancy. Before making an award to the Landlord, I want to note that the submitted invoice for the painting did not detail the required work in each room

and that the Landlord had admitted that there was a bathroom that was painted that he did not have any evidence of damage. I also note that the Landlord has not presented any evidence that he attempted to mitigate his potential losses by obtaining other quotes for the work at a lower price. I accept that the Landlords should be compensated for a good portion of the painting costs; however, only award 75% of the claimed losses to acknowledge that there may have been some painting that wasn't required and that there could have been less expensive ways to return the rental unit walls back to their pre-tenancy condition. I find the Landlord has established a monetary claim in the amount of \$3,279.18 (75% x \$4,372.25).

- Exterior clean-up. Based on the Landlord's testimony and the pictures of the residential property, I find that the Landlord has established that the Tenants left behind miscellaneous items and garbage that had to be hauled away. The Landlord acknowledged that there were no terms in the Tenancy Agreement that specifically addressed the Tenants' responsibility for yard maintenance. I note that the standard terms in a Tenancy Agreement include that tenants are responsible to maintain reasonable health, cleanliness and sanitary standards throughout the residential property and do not make mention of yard maintenance. As such, I grant a nominal award for the Landlords, in the amount of \$100.00, to acknowledge the cost of gathering and hauling the Tenants' garbage from the residential property.
- Damaged blinds. Based on the Landlord's undisputed testimony, the pictures of the damaged blinds and the Condition Inspection Report, I find that the Landlord has established a monetary claim for the damaged blinds. I award the Landlord damages for the replacement cost and installation of the blinds, as claimed, for a total of \$1,700.82.
- Damaged kitchen sink. Based on the Landlord's undisputed testimony that the sink was damaged, the video of the damage, the Condition Inspection Report and the submitted invoice, I find that the damage occurred during the tenancy. As such, I find that the Landlord has established a monetary claim in the amount of \$171.15.
- Interior clean-up. The Landlord stated the Tenants failed to clean the rental unit properly and submitted pictures to show how garbage had been left in the bathroom and furnace room, that floors required further cleaning, and that the bathroom tub and tile surround required cleaning. The Landlord submitted an invoice for \$567.00. The Tenant claimed that she did clean the rental unit prior to vacating the unit. Based on a balance of probabilities, I find that the Landlord has established that the unit required further cleaning and as such, I award the Landlord \$567.00 in damages.

Based on the findings above, I find that the Landlords' Application has merit and that the Landlords are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

- **Serving of Papers.** Before considering whether the Landlords should be compensated for the costs incurred to serve the Notice of Dispute Resolution Proceedings and their evidence to the Tenants, I firstly had to determine if the Landlords' Application had merit. I have found that the Landlords' Application has merit and also accept that the Landlords did everything they could to serve the Notice of Dispute Resolution Proceedings to the Tenants who did not provide a forwarding address and did not acknowledge the emails sent to them from the Landlords. As such, I find that the Landlords, to proceed with this dispute process, were left to hire a process server to serve the Notice of Dispute Resolution Proceedings package to the Tenants. As such, I grant the Landlords compensation for the costs of the process server, in the amount of \$325.00.

I issue a Monetary Order in the Landlords' favour under the following terms, which allows the Landlords to recover unpaid rent, damages, compensation, the filing fee, and to retain the Tenants' security deposit, pursuant to section 72 of the Act:

<b>Item</b>	<b>Amount</b>
Unpaid January 2021 Rent	\$2,200.00
Damaged countertop	1,442.70
Damage to door	227.50
Damaged windows	495.34
Painting	3,279.18
Exterior clean-up	100.00
Damaged blinds	1,700.82
Damaged kitchen sink	171.15
Interior clean-up	567.00
Serving of papers	325.00



Recovery of filing fee for this Application	100.00
Subtotal	\$10,608.69
Less security deposit and pet damage deposit	-1,650.00
<b>Total Monetary Order</b>	<b>\$8,958.69</b>

The Tenants have not provided a forwarding address to the Landlords. During the hearing, the Tenant provided an email address for the service of this Decision. As the Landlords may be required to serve the Monetary Order on the Tenants, I authorize the Landlords to use the Tenants' email address to serve the Decision and Monetary Order, pursuant to section 71 of the Act. I have included the email for service on the Style of Cause (front page) of this Decision.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$8,958.69. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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: June 03, 2021

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Residential Tenancy Branch