



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MND MNDC MNSD FF

### Introduction

This hearing dealt with cross applications between the parties.

The Tenants filed an Application for Dispute Resolution, in which they made application for money owed or compensation for damage or loss under the Act and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord submitted a significant amount of evidence in relation to her Application for Dispute Resolution, which did not clearly specify the nature of her claims. She was asked to specify her claims for damages during the original hearing, all of which have been addressed in this decision. The Landlord attempted to claim additional damages at the reconvened hearing, however these damages were not addressed at the hearing because the Landlord had not provided sufficient details regarding the nature of these claims in her initial Application for Dispute Resolution or at the original hearing, when she was given the opportunity to specify her claims for damages.

Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions to me.

At the beginning of the first hearing the Tenants stated that they had not been served with documents related to the Landlord's Application for Dispute Resolution until six days after the application had been filed. The Tenants declined the opportunity to request an adjournment to remedy the late service of documents.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's application, is whether the Landlord is entitled to a monetary order for damage to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenants' application are whether the Tenants are entitled to compensation for being served a Notice to End Tenancy pursuant to section 49 of the *Act* and to recover the filing fee for the cost of this Application for Dispute Resolution.

### **Background and Evidence**

The Landlord and the Tenants agree that this tenancy began in 1998; that the Tenants paid monthly rent of \$1,350.00 at the end of the tenancy; and that the Tenants paid a security deposit of \$337.00 on June 27, 1988.

The Landlord and the Tenants agree that the Landlord served the Tenants with a valid Two Month Notice to End Tenancy for Landlord Use of Property on July 26, 2008. The reason cited on the Notice for ending the tenancy is that the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The Notice to End Tenancy indicated that the Tenants must vacate the rental unit by September 30, 2008.

The Landlord and the Tenants agree that on August 15, 2008, the Tenants gave the Landlord written notice of their intent to vacate the rental unit at the end of August. The parties agree that the Tenants did vacate the rental unit at the end of August, after paying full rent for that month.

The Landlord and the Tenants agree that the Landlord also served the Tenants with a Notice to End Tenancy for Cause, which also required the Tenants to vacate the rental unit on September 30, 2008. The Tenants did not dispute this Notice as they had decided to vacate the rental unit prior to the effective date of the Notice.

The Landlord submitted an undated condition inspection report prior to the original hearing, which she stated was completed at the beginning of the tenancy by the person who was acting as the property manager at that time. She stated that the report was initialled by one of the Tenants and by her property manager.

Both Tenants stated that they did not initial the condition inspection report. They state that this inspection report was not completed at the beginning of their tenancy.

At the original hearing the Witness for the Landlord#1 stated that he completed the condition inspection report with people he believes are these Tenants, and he initialled it after conducting the inspection. He stated that he acted as an agent for the Landlord over twenty years ago so his memory of these events is vague. He stated that he stopped acting as an agent for the Landlord sometime in 2006.

The Landlord submitted a second condition inspection report after the original hearing but prior to the hearing being reconvened. She stated that she believes that the report was completed at the beginning of the tenancy, although she acknowledges that she was not present when the report was completed. Although the report has the surname of the Tenants printed on the top, it is unsigned and undated.

The male Tenant stated that they did not walk through the rental unit with the Landlord, or an Agent for the Landlord, at the beginning of the tenancy. He stated that he has some recollection of an inspection report similar to the one submitted in evidence was presented to him but he does not recall it being very detailed, and believes that some check marks have been added since the Tenants viewed the list at the beginning of the tenancy.

The Landlord stated that she did not walk through the rental unit with the Tenants at the end of the tenancy, nor did she complete a Condition Inspection Report, due to the hostility between the parties.

The Landlord is claiming compensation for a hole in the dining room wall, which appears to have been made with a fist. Both Landlords report that there was a hole in the wall and both Tenants deny there was a hole in the wall. The Landlord did not submit a Condition Inspection Report from the end of the tenancy or photographs of the damage to corroborate their statements that there was a hole in the wall. They did submit a letter from an employee of the Landlord who stated there was damage to the living and dining room walls that was consistent with punching or kicking.

The Tenants deny making holes in the walls by punching or kicking them.

The Landlord is claiming compensation for damage to a wall that she claims was caused when the Tenants installed a rod in the bedroom. The Tenants contend that this rod was in the bedroom at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$600.00, for the cost of repairing six windows in the rental unit. The Landlord stated that six windows no longer open due to the fact that the Tenants painted the window frames shut. The Landlord submitted two letters from two witnesses, dated August 23, 2008 and October 21, 2008, in which the witnesses stated that some windows in the rental unit did not open because the frames had been painted shut from the inside. The Landlord submitted photographs, in which the window frames appear to be painted shut.

The Tenants acknowledge that they have painted various portions of the interior of the home throughout their tenancy. The female Tenant stated that they never opened some windows so they do not know if they opened at the beginning of the tenancy, and that other windows didn't open at the beginning of the tenancy due to swelling. She stated that the exterior of the house was also painted during their tenancy, which may have contributed to the problem of the windows not opening.

The Landlord submitted a receipt, in the amount of \$300.00, for the cost of removing the paint from the window frames to allow them to be opened. The Landlord stated that the expense was only for removing paint from the frames to allow the windows to open and did not include the cost of sanding and repainting the window frames. She stated that the windows could not be loosened with a knife, but had to be chiselled open.

The Landlord is claiming compensation for numerous nail holes in the walls and window frames. The Landlord submitted photographs of the damage, all of which appeared to be limited to less than 1/4" in diameter. The holes appear to have been made by the Tenants attaching items to the walls during their tenancy.

The Landlord is claiming compensation for moving a large, heavy sheet of metal that was left behind by the Tenants. The male Tenant stated that he told the Agent for the Landlord that he was unable to move the sheet of metal at the end of the tenancy, but that he would return to retrieve it as soon as he could make arrangements to move it. He stated that he returned to the rental unit on September 10, 2008 but he could not locate the sheet of metal. He subsequently learned that the item had been moved to the neighbour's yard. Upon learning of its new location, he did not make immediate attempts to move it, as he had a good relationship with the neighbours and they were storing other property for him.

The Landlord stated that the Agent for the Landlord told her that the Tenants did not want the sheet of metal. She stated that she had the sheet of metal moved to the neighbour's property where other items were being stored by the Tenants. She stated that sometime in October she moved the item back to her own property and buried it in the yard.

The Agent for the Landlord was called as a witness by the Landlord. She stated that she recalls the male Tenant telling her that he did not have a vehicle that could move the sheet of metal, at which time she told him "not to worry about it". She stated that she understood that the Tenants were going to leave the item on the property, which she advised them would be acceptable. Upon questioning by the male Tenant, the Agent for the Landlord stated that she does not specially recall that portion of the conversation, but she agreed that the Tenant may have advised her that he was returning for the property.

The Landlord is seeking compensation for blinds that were missing from the living room and dining room. She stated that the windows in these rooms were equipped with wooden "roman blinds" at the beginning of the tenancy and that the blinds were not in the rental unit at the end of the tenancy.

At the reconvened hearing, the Witness for the Landlord#2 stated that he lived in the rental unit prior to this tenancy and that there were blinds in the living and dining room at the end of his tenancy. He described the blinds as bamboo or wooden blinds that rolled up, although he prefaced his evidence by stating that he only has a vague recollection of them.

The male Tenant initially stated that there were no wooden blinds in the living and dining room at the beginning of the tenancy. After hearing the evidence of the Witness for the Landlord, he agreed there had been some bamboo rollup blinds on the windows at the end of the tenancy. He stated that these blinds were taken down at the beginning of the tenancy and placed in the basement with other property belonging to the Landlord. He stated that during recent renovations to the rental unit, the Landlord's contractor discarded a lot of property from the basement, which may have included the blinds.

The Landlord is claiming compensation for plants that were missing from the rear yard of the rental unit. She submitted a photograph of the rear of the rental unit, located on page 45, which she contends shows that the plants had been removed by the Tenant.

The Tenant stated that she removed her own plants from the yard prior to the house being excavated in February of 2008. She stated that she left plants belonging to the Landlord, and that these plants were removed when the building was excavated.

### **Analysis**

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I find that the Tenants did receive notice to end a tenancy under section 49 of the *Act* and that they are, therefore, entitled to compensation in the amount of \$1,350.00, which is the equivalent of one month's rent. I find that the Tenants are entitled to compensation under section 51, regardless of the fact that they vacated the rental unit early, as section 50(3) of the *Act* provides for an early end to tenancy.

I find that the Landlord has submitted insufficient evidence to establish that she has a Condition Inspection Report that was completed at the beginning of this tenancy in 1998. I find that the Condition Inspection Report that the Landlord originally held out to be the one that was completed at the beginning of this tenancy, which the Tenants deny

signing, was completed by an individual who ceased being the Landlord's agent in 1986. I find, therefore, that this report was not completed when this tenancy began in 1988.

The second Condition Inspection Report that was submitted by the Landlord after the original hearing is not signed or dated by the Tenants and the Tenants do not agree that this report accurately represents the check list that they viewed the beginning of the tenancy. I find that this Condition Inspection Report cannot be relied upon to represent the condition of the rental unit at the beginning of the tenancy, as there is insufficient evidence to establish that it was the form that was viewed by the Tenants at the beginning of the tenancy, and the Tenants do not acknowledge that it represents the condition of the rental unit at the beginning of the tenancy.

When seeking compensation for damages, it is generally understood that the burden of proving a fact is upon the person who alleges it and not upon the person who denies it. In circumstances where the applicant contends there were damages and the respondent denies there was damage, the onus is on the applicant to show that there was damage.

After hearing the contradictory evidence of both parties regarding the hole in the dining room wall, I find that the Landlord has submitted insufficient evidence to show that the Tenants damaged the wall. In reaching this conclusion, I was strongly influenced by the lack of photographs or a Condition Inspection Report that was completed at the end of the tenancy, which corroborates the Landlord's claim. Although I acknowledge that an employee of the Landlord submitted a letter stating that he observed the holes, I find that his description of the damage is so limited that it prevents the Tenants from explaining the holes and it prevents me from making a meaningful assessment of the damage. As the Landlord has not established that the Tenants damaged the wall, I hereby dismiss the Landlord's claim for damage to the dining room wall.

After hearing the contradictory evidence of both parties regarding the damage to the bedroom wall that was allegedly caused by installing a rod in the bedroom, I find that the Landlord has submitted insufficient evidence to show that the Tenants damaged the wall. In reaching this conclusion, I was strongly influenced by the absence of a Condition Inspection Report from the beginning of the tenancy, which establishes the condition of the walls at that time. As the Landlord has not established the condition of the walls at the beginning of the tenancy, I find that she has not established that the Tenants are responsible for damaging the walls during their tenancy. On this basis, I dismiss the Landlord's claim for damage to the bedroom wall.

After hearing all of the evidence regarding the window frames being painted shut, I find there are reasonable grounds to conclude that the windows in the rental unit were painted shut by the Tenants during this tenancy. In reaching this conclusion I considered the following:

- The written evidence of the two independent parties who observed that the window frames had been painted shut from the inside
- The photographs of the window frames that tend to show that the frames have been painted shut from the interior
- The Tenant's admission that they did paint the frames
- The Tenants' admission that they have never opened some windows in the home, which means they did not open them when they painted the frames.

I find that the Tenants are responsible for the costs of freeing the window frames from paint which they applied, as their actions damaged the rental unit. The Landlord submitted a receipt, in the amount of \$300.00, for the cost of freeing the windows, and I find that she is entitled to compensation in this amount.

I find that the Tenants are not responsible for repairing nail holes in various locations of the rental unit. In reaching this conclusion I was strongly influenced by the fact that the nail holes are not large, that they caused a minimum of damage; that the rental unit is very old; and that this was a tenancy that lasted approximately twenty years. I find that the nails holes made during this tenancy constitute normal wear and tear, which the Tenants are not required to repair.

I find that the Tenants are not responsible for the cost of moving and disposing of a sheet of metal that was left at the end of the rental unit. I find that the Tenant intended to move the sheet of metal on September 10, 2008, and that the item would have been moved at that time if the Landlord had not moved the item to a different location. I further find that the Landlord elected to move the sheet of metal back onto her property after September 10, 2008, without advising the Tenants that she wished them to retrieve it from her property. I find that the actions of the Landlord interfered with the Tenants' ability to dispose of the item, and that she is not entitled to compensation for having to dispose of it herself. In reaching this conclusion I was strongly influenced by the fact that the male Tenant had a conversation about the time with the Agent for the Landlord, and was advised that the item could be left behind.

I find that the Tenants are not responsible for replacing blinds that were in the living room and dining room at the beginning of the tenancy. In the absence of evidence to the contrary, I accept their evidence that the blinds were moved to the basement at the beginning of the tenancy. Given that the rental unit was undergoing extensive renovations, which included raising the house, I find it entirely plausible that the blinds would have been discarded during renovations by labourers, particularly when the blinds were over twenty years old.

I find that the Tenants are not responsible for replacing plants that were missing from the yard at the end of the tenancy. I find that the Landlord has submitted insufficient evidence to establish that the plants were not damaged during renovations, as is

claimed by the Tenants. In reaching this conclusion I was largely influenced by the photograph submitted by the Landlord, which shows that the yard had been almost completely leveled during renovations. I find that this picture adds credibility to the Tenants' claim that the plants were destroyed during renovations.

I find that the Landlord must return the security deposit of \$337.00, plus interest in the amount of \$232.76, to the Tenants.

I find that the applications of both parties have some merit and, therefore, I find that they are both responsible for their own costs of filing these Applications for Dispute Resolution.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$300.00 for removing paint from six window frames.

I find that the Tenants have established a monetary claim, in the amount of \$1,919.76, which is comprised of \$1,350.00 compensation pursuant to section 51 of the Act; \$337.00 for the return of their security deposit; and \$232.76 in interest on their security deposit.

Based on these determinations I grant the Tenants a monetary Order for the amount \$1,619.76, which is the difference between the two monetary claims. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: December 01, 2008