



# 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 by the parties. The landlords are seeking a monetary claim related to damage to the rental unit and a request to retain the tenants' security deposit plus interest in partial satisfaction of this claim. The tenants are seeking the return of their security deposit plus compensation for loss due to the malfunction of a toilet in the rental unit. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

### Issues to be Determined:

Has the landlord established a monetary claim related to damage done to the rental unit by the tenants? Are the tenant's entitled to compensation due to loss of the use of the toilet? Can the landlord retain the tenant's security deposit plus interest in partial satisfaction of this claim?

### Background and Evidence:

This tenancy began on March 1, 2008 for the monthly rent of \$900.00. The tenancy was for the period of six months ending effective September 1, 2008. The tenant's paid a security deposit of \$450.00 on March 1, 2008. The landlord did not conduct a move in condition inspection with the tenants and did not provide a copy as a result. However, an agent of the landlord did take photographs of the rental unit at the start of the tenancy. The landlords submit that the tenants failed to appear for the move out condition inspection on September 1, 2008.

The landlords submits that the tenants' breach the tenancy agreement by damaging the rental unit during the tenancy and by failing to return the rental unit in an undamaged condition. The landlords rely on photographic evidence to support their application. The landlord alleges the following claim for damages caused by the tenants:

Missing screen in bedroom window	\$20.00
Damaged window in living room	\$789.32
Replacement of damaged carpet in upper bedroom	\$1,063.74
Damage to front door and door frame	\$383.88
Damage to laminate flooring due to hole drilled through floor	\$1,485.40

Damage to kitchen floor	\$310.80
Severe damage to walls in rental unit including bug smears, holes, & carvings.	\$1,071.41
Damage to stairway railing	\$20.00
Half the cost of septic pumping	\$75.00
Replacement of wood pellets used by tenants	\$50.00
Cost to clean and repair yard	\$315.00
Recovery of filling fee paid for this application	\$50.00
<b>TOTAL</b>	<b>\$5,634.55</b>

The tenants are seeking the return of their security deposit plus interest plus \$550.00 for loss of use of the toilet which they alleged the landlords failed to repair. During the hearing the tenants submitted that the majority of the damage claimed by the landlords was pre-existing from the previous tenants. However the tenants did concede to the broken window, the bug smears on the walls and their failure to maintain the yard as agreed to in the tenancy agreement.

The tenants submit that the photographic evidence should be rejected as it was illegally obtained and should not replace the evidence of a move in or move out condition inspection which the landlords failed to perform.

The parties resolved the issue with the replacement of the broken window prior to this hearing.

#### Analysis:

I find that both the landlords and the tenants failed to properly follow the *Act* with respect to the move in and move out condition inspection reports. I accept that the landlords failed to conduct a move in condition inspection and I accept that the tenants failed to appear to conduct the move out condition inspection report. I am also satisfied that the tenants failed to provide the landlords with a forwarding address until it was served on the landlords as part of the tenants' application for dispute resolution. Therefore, I will apply section 72 of the *Act* at the conclusion of this decision and offset any monetary awards through the tenants' security deposit plus interest.

I find based on the evidence before me, including the testimony during the hearing and the submitted e-mail correspondence that the tenants failed to properly pursue or communicate with the landlords the extent of the problems with the toilet. The tenant has an obligation to properly communicate the repairs required and then provide the landlords a reasonable time to respond. I find that the landlords are not responsible for any loss of use of the toilet due to the tenants' failure to properly request assistance and deny the tenants' claim for compensation.

I do not accept the tenants' submission that the photographic evidence should not be allowed. The tenants were present at the time the landlords took the photographs during their visit on August 26, 2008 to replace the bathroom flooring. I accept that the rental

unit was in such a state of uncleanness to warrant the landlords' taking pictures. The tenants were present and could have raised objections at that time.

However, due to the landlords' failure to conduct a move in condition inspection I must determined their claim for damages on the basis of the photographic evidence only. As a result I will only accept damages which are clearly a result following the tenants' occupation.

The photographs depict areas of the rental unit prior to the tenancy starting, the condition of the rental unit in August 2008 and photographs of the work as the landlords have made repairs. The photographs depict the damaged door and door frame; however, I have no evidence that this damage did not exist prior to the tenancy. Therefore, I deny the landlord's request for repairs to the door and door frame or for repairing the railing.

I accept the landlords' claim for damages to the flooring in the rental unit in part. I accept from the photographic evidence that the flooring in the rental was in good condition and undamaged, except for the carpeting claimed by the landlord. The landlords have indicated that the carpeting had existing damage. However, the landlords are not entitled to replacement of the flooring in the rental unit. They are only entitled to reasonable repair costs or an assessment of the damage to the total value of the flooring, less normal wear and tear and depreciation.

For example, the laminate flooring has a hole drilled through it. I am not satisfied that the whole floor is to be replaced due to this damage. I find that the landlords are only entitled to an assessment of damage cause to the floor or reasonable repair costs. I find that this damage could reasonably be repaired. I find that the landlords are entitled to \$300.00 towards repair costs for the damage to the laminate flooring. The landlords have indicated that to repair the kitchen flooring it will require the replacement of 35 tiles at the cost of \$1.50 each. I accept this sum and also find that a further sum of \$200.00 would cover the labour cost to repair the flooring for a total sum of \$252.50.

I find that the landlords are not entitled to any damages for the carpet. The carpet was already damaged and the landlords were unable to establish the age of the carpet. Carpets only have a useful life of 10 years after which they should be replaced. After this period they would have no value. I have no evidence, despite the further damage to the carpet, that there was any further value to the carpet on which to assess any damage or loss for the landlords.

I accept the landlords' claim for costs to repair the walls to the rental unit in full for the sum of \$1,071.41. The tenants have acknowledged that at least the bug smears are due to them and I am satisfied that they are responsible for the other damaged depicted in the photographs.

Finally I accept the landlords' claim for costs arising out of the tenants' failure to comply with the tenancy agreement including the cost of emptying the septic tank for \$75.00, replacing the wood pellets for \$50.00 and for the cost of yard clean up of \$315.00. I also

Order that the tenants reimburse the landlords the sum of \$50.00 recovering the filling fee paid for their application.

I find that the landlord has established a total monetary claim of \$2,113.91. From this sum I Order that the landlords may retain the tenants' security deposit plus interest of \$455.16 in partial satisfaction of this claim.

Conclusion:

I dismiss the tenants' application without leave to re-apply.

I grant the landlords a monetary Order for the sum of **\$1,658.75**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated December 05, 2008.

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Dispute Resolution Officer