



# Dispute Resolution Services

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

## Decision

Dispute Codes: MND, MNSD, FF

## Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damages to the rental unit as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

## Issue(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

## Background and Evidence

This month to month tenancy started on July 1, 2003 and ended on October 31, 2008. The Tenants paid a security deposit of \$335.00 on June 1, 2003.

The Landlord said the Tenants agreed to move out 2 or 3 days early so that she could repaint and put new carpet in the rental unit. She claimed the Tenants moved out most of their possessions on October 28, 2008 but left behind a few boxes and clothes. The Landlord said she asked the Tenants on October 29, 2008 when they would be cleaning the rental unit but they did not return until 2:00 pm on October 31, 2008 to do the cleaning. The Landlord said she had already started cleaning around 12:00 noon on October 31<sup>st</sup> so that a new tenant could move in. The Landlord said she spent 12 hours on October 31<sup>st</sup> and a further 6 hours on November 1<sup>st</sup> doing general cleaning and repairing tiles surrounding a bathtub. The Landlord alleged that the Tenants were responsible for damaging tiles in the bathroom, kitchen appliances as well as the balcony from cigarettes. The Landlord said despite all of the damages, she was only claiming compensation to the maximum of the amount of the security deposit.

The Landlord claimed she first spoke to the Tenants about completing a condition inspection report on October 28, 2008 and they said they would do it after they had cleaned the rental unit. The Landlord said she asked the Tenants again on October 31<sup>st</sup>,

however they refused and also refused to sign the move out condition inspection report to acknowledge the condition of the rental unit. The Landlord said she did not offer the Tenants any other opportunity to do a condition inspection.

The Tenants claimed that the Landlord (who is the property manager) approached them on October 25<sup>th</sup> and asked them to move out by the 26<sup>th</sup> so she could have the rental unit re-painted and new carpet put in. The Tenants said they told the Landlord they would try but that they still needed time to clean. The Tenants claim that the Landlord told them they did not need to worry about washing the walls or cleaning the carpet. The Tenants said they removed most of their things on the 28<sup>th</sup> and returned around 6 pm on October 29, 2008 to pick up the rest of their things and do some cleaning but the Landlord would not let them because she said the painter needed to get into the rental unit and couldn't wait any longer. Consequently, the Landlord helped the Tenants to put the balance of their belongings in garbage bags so that the painter could get started. The Tenants said they told the Landlord they were not available on October 30, 2008 to do cleaning and the Landlord told them they could do it on October 31, 2008. The Tenants said they arrived at the rental unit at 12:30 on October 31, 2008 with some cleaning supplies but the Landlord refused to let them do any cleaning and told them they were not entitled to be there.

The Tenants said they returned on November 1, 2008 to get their security deposit but the Landlord refused to return it and asked them to sign a condition inspection report which they refused to do. They did write a note on the form indicating that the Landlord had refused to allow them to clean the rental unit on October 28<sup>th</sup> and October 31<sup>st</sup>. The Tenants denied that the Landlord offered them an opportunity to do a condition inspection on October 31, 2008. The Tenants also denied that the rental unit required 18 hours of cleaning and/or repairs. They said it was a one bedroom, 700 square foot apartment with a cement balcony. The Tenants also denied they were responsible for any damages alleged. The Tenants argued that the Landlord's policy was not to return security deposits.

The Landlord denied that she would not allow the Tenants to do any cleaning on October 29, 2008. She said the painter was in the rental unit but was only painting the ceiling of the bedroom at the time.

### Analysis

Section 37(1) of the Act says that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:00 pm on the day the tenancy ends. I find the tenancy ended on October 31, 2008. I also find that the Tenants agreed to move most of their belongings by October 28<sup>th</sup> to give the Landlord an opportunity to repaint and change the carpet in the rental unit. Given that the Tenants were still entitled to exclusive possession of the rental unit until 1:00 pm on October 31, 2008, the Landlord

was not entitled to restrict the Tenants' access to the rental unit for any reason between October 28<sup>th</sup> and October 31<sup>st</sup> at 1:00 pm.

The Parties' evidence was contradictory as to whether the Landlord prevented the Tenants from cleaning on October 29, 2008. The Landlord said painting occurred on the 28<sup>th</sup> and 29<sup>th</sup> and the carpeting was replaced on the 30<sup>th</sup>. However, I note in the statement of the Landlord's painter that he says he painted on October 29<sup>th</sup> and 30<sup>th</sup>. He also said he arrived on October 29<sup>th</sup> to find one of the Tenants already in the rental unit packing. Consequently, I find that it was likely the Landlord was in a rush to get the painting completed so that the new carpeting could be installed the following day and that as a result, the majority of the painting was probably done after 6 pm on October 29<sup>th</sup>. I do not give much weight to the statement provided by the Landlord's painter that the Tenants could have done cleaning on October 29<sup>th</sup> as he was not a party to the conversations between the Landlord and Tenants.

Section 37(2) of the Act says that a tenant must leave a rental unit reasonably clean and undamaged at the end of a tenancy. Section 7(2) of the Act says that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the Act or tenancy agreement must do whatever is reasonable to minimize the damage or loss. I find on a balance of probabilities that the Landlord needed to have the rental unit painted on the evening of October 29<sup>th</sup> and as a result told the Tenants they could not do cleaning at that time. In not allowing the Tenants this opportunity to clean the rental unit, I find the Landlord prevented them from mitigating their damages and as a result, the Landlord's claim for cleaning expenses is dismissed.

The Landlord also claimed that the Tenants were responsible for damages to appliances, tiles in the bathroom and the cement balcony. The Landlord provided a copy of a move in and a move out inspection form which is very general in nature and I find it does not comply with the requirements of s. 20 of the Regulations to the Act. Consequently, I find that the condition inspection report is unreliable evidence of the condition of the rental unit. I also find that the Landlord has not complied with s. 35 of the Act and s. 17 of the Regulations to the Act which say that the Landlord must offer the Tenants 2 opportunities to do a condition inspection with the last opportunity being given in writing. I find that the Landlord did not offer the Tenants an opportunity to do a condition inspection at the end of the tenancy and for that reason also I do not give that report much weight.

There is no mention on the move out condition inspection report provided by the Landlord of the nature of the damages alleged by the Landlord to the bathroom tiles, problems with the kitchen appliances or the balcony (as required by s. 20(f) and (g) of the Regulations to the Act). The Landlord also relied on photographs she says she took of the rental property on October 31, 2008 as evidence of damages. The Landlord, however, did not provide any evidence to support her argument that the bathroom damage was due to a deliberate act or neglect of the Tenants as opposed to reasonable

wear and tear. There was also no evidence in support of the Landlord's claim that the balcony or appliances were damaged or any evidence as to the estimated dollar value attributed to those alleged damages. For all the foregoing reasons, I find that the Landlord has not shown she is entitled to compensation for the damages she attributes to the Tenants and her application is dismissed.

I order the Landlord to return the security deposit of \$335.00 plus accrued interest of \$11.66 to the Tenants.

### Conclusion

A Monetary Order in the amount of **\$346.66** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.