



# 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 and 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

The tenancy started on December 1, 2003 and ended on February 1, 2009. The Tenant paid a security deposit of \$325.00 on November 22, 2003. The Landlord purchased the rental property from the former owner in approximately 2007. The Landlord claimed the Tenant caused the following damages to the rental unit:

- Approximately \$200.00 to replace a broken door and frame plus \$40.00 for a new lock;
- \$100.00 to have a carpenter install the new door and frame, fix a kitchen drawer and install 2 new panel doors;
- \$25.00 for the cost of materials to make 2 new panel doors;
- \$210.00 to replace broken Venetian blinds in the living room and kitchen;
- \$75.00 to repair holes in walls from running cables and numerous thumbtack holes plus \$25.00 to repairs a hole in the ceiling;
- \$25.00 to remove garbage;
- \$10.00 to replace 3 sink stoppers;
- \$80.00 to replace 2 light covers in the living room
- \$60.00 to replace a missing gas detector and \$39.00 to replace a missing smoke detector;
- \$60.00 to remove wallpaper borders;

- \$25.00 to replace 2 electrical outlets (kitchen and living room);
- \$10.00 to replace knobs on the bathroom cupboards;
- An unspecified amount to replace moldings around an interior door.

The Landlord acknowledged that the Tenant had returned a satellite box and as a result, he was willing to reduce his claim by \$100.00. Neither a move in nor a move out condition inspection report was done. The Landlord said he asked the Tenant to do a move out inspection report but he refused to participate.

The Tenant claimed that many of the damages in question pre-existed the tenancy. The Tenant provided a copy of a statement from the previous owner who claimed that he gave the Tenant permission to remove the interior door and molding (so he could move in furniture) because he had plans to widen it. The previous owner also claimed that the wallpaper borders and thumbtack holes existed prior to the tenancy. The Tenant claimed that the other holes in the wall and ceiling were made by a previous tenant to run cables from the upper suite to the lower suite. The Tenant also claimed that a kitchen drawer was broken at the beginning of the tenancy.

The Tenant said the front door and frame were damaged prior to his tenancy. He said he got the permission of the previous owner to reinforce the broken area of the door with a brass plate and put in a new lock. At the end of the tenancy, the Tenant said he removed the brass plate and lock (exposing the damaged area) and replaced it with the lock set that was there when he moved in. The Tenant also claimed he gave the Landlord the keys that he received at the beginning of the tenancy.

The Tenant claimed the Venetian blinds were not in good condition when he moved in and had suffered further wear and tear throughout the tenancy. The Tenant also argued that the Landlord had inflated the cost of replacing the blinds. The Tenant said the bathtub and sink stoppers were in the rental unit at the end of the tenancy. The Tenant also said that there were no knobs on the bathroom cupboards at the beginning of the tenancy so he purchased some and removed them at the end of the tenancy. Similarly, the Tenant said at the beginning of the tenancy there were no light covers in the living room so he purchased some and removed them when he left.

The Tenant denied that there ever was a gas detector and said that the previous owner removed his smoke detector because he was going to upgrade it but never replaced it. The Tenant said he believed it was still in the garage. The Tenant claimed that the electrical outlet in the kitchen was damaged at the beginning of the tenancy and had no knowledge of the one in the living room being damaged. The Tenant admitted that the electrical box panel broke when he tried to open it but claimed it was old and sealed with many layers of paint. The Tenant claimed he also had to pry open a panel to access the water shut off (which was in similar condition) but only because the Landlord asked him to.

With respect to the garbage, the Tenant claimed that 75% of the garbage was removed from the rental unit by a friend within a day. The Tenant claimed that the remaining items were electronics that had to be disposed of at a recycle depot and were removed by his friend a few days later. Consequently, the Tenant argued that there was nothing for the Landlord to remove.

### Analysis

Section 35 of the Act says that a Landlord must prepare a condition inspection report at the end of the tenancy even if the Tenant does not participate. Section 17 of the Regulations to the Act sets out the procedure a Landlord must follow which includes offering the Tenant 2 opportunities to participate. When making the second offer, the Landlord must give the Tenant a form called a "Final Notice to Conduct a Condition Inspection Report." If the Tenant does not participate on the day set out on the notice, the Landlord must fill out the Report on his own.

Section 21 of the Regulations to the Act says in part that "a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit on the date of the inspection" Consequently, it is often the best evidence that a Landlord can rely on to show that a rental unit was damaged during the tenancy. Instead of a Condition inspection report, the Landlord provided photographs of some of the damages at the end of the tenancy. The photographs are of limited use however, because they do not prove when the damages happened. The Landlord claimed that he did not see the damages (or missing items) when he viewed the rental property prior to buying it.

Section 32 of the Act says that a Tenant is responsible for damages to a rental unit caused during a tenancy unless they are the result of reasonable wear and tear. In this case, the Landlord has the burden of showing that the Tenant caused the damages in question during the tenancy and that it was not the result of reasonable wear and tear. This means that where the evidence of the Landlord is contradicted by the Tenant, the Landlord will need to provide further corroborating evidence to resolve the contradiction.

With the exception of the living room Venetian blinds, I find that there is insufficient evidence to support the Landlord's claims in this matter. In other words, given the Tenant's contradictory evidence that damages pre-dated the tenancy or were the result of wear and tear, I find that the Landlord has not met the evidentiary burden on him to prove his claims.

I find that the Landlord is entitled to recover \$60.00 for the cost of the blinds. Pursuant to s. 62(3) of the Act I order the Landlord to return the balance of the Tenant's security deposit plus accrued interest of \$11.51 to the Tenant. As the Landlord has not been successful in this matter, his application to recover the filing fee is also dismissed.

### Conclusion

The Landlord's application to recover the replacement cost of blinds is allowed but the balance of his application is dismissed. A monetary order in the amount of **\$276.51** has been issued to the Tenant 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.