



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; 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.

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

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent for January of 2008 and compensation for damages to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on November 01, 2006; that the Tenant was required to pay monthly rent of \$754.00 in the latter part of the tenancy; that the Tenant paid a security deposit of \$362.50 on October 31, 2006; and that the Tenant paid a pet damage deposit of \$362.50 on October 31, 2006.

The Tenant stated that friends of a former co-tenant broke into the rental unit on December 19, 2008, claiming that the co-tenant gave them permission to reside in the rental unit. She stated that the friends of the former co-tenant refused to leave so she vacated the rental unit on that day.

The Tenant stated on December 19, 2008, she advised the Agent for the Landlord that she was vacating the rental unit because the people in the rental unit were refusing to leave. She originally stated that she gave the Landlord written notice of her intent to



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vacate on December 19, 2008, but that she could no longer locate that letter. She subsequently stated that she couldn't remember if she had given written notice on December 19, 2008, but she recalls giving verbal notice to the Agent for the Landlord on that date.

The Agent for the Landlord stated that the Tenant did not give her verbal notice of her intent to vacate the rental unit on December 19, 2008. She stated that she was not aware the Tenant had vacated until January 05, 2009.

The Agent for The Landlord and the Tenant agree that on January 05, 2009, the Tenant provided a letter to the Landlord advising her that she was relinquishing control of the rental unit to the Landlord on January 05, 2009. The letter indicates that she will collect her furniture and belongings from the rental unit prior to January 31, 2009.

The Witness for the Tenant #2 stated that the Tenant told her she had given notice to end her tenancy to the Landlord on December 19, 2009, although she was not present when the notice was allegedly given.

The Landlord and the Tenant agree that the Tenant gave the Landlord written permission to keep or discard any personal property left in the rental unit after January 31, 2009. The parties agreed that the Tenant returned to the rental unit periodically during the month of January to remove personal belongings.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her forwarding address, in writing, on March 02, 2009.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay rent for January of 2009. The Landlord is seeking compensation, in the amount of \$754.00, for unpaid rent from January of 2009.

The Landlord is claiming compensation, in the amount of \$130.00, for cleaning the rental unit. The Agent for the Landlord stated that the suite was not cleaned properly and there was personal property left in the rental unit. She stated that it took 6.5 hours to clean the suite, for which she is claiming compensation at a rate of \$20.00 per hour.

The Tenant stated that she cleaned the rental unit prior to January 31, 2009, although she acknowledged that she left some personal property in the rental unit.

The Landlord submitted photographs of the rental unit that the Agent for the Landlord contends were taken in March of 2009. The photographs are dated March 05, 2009. The Agent for the Landlord stated that she took these photographs after she received the Tenant's forwarding address, in writing, on March 02, 2009. These photographs

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clearly indicate that there is a large amount of personal property left in the rental unit, including an organ that the Tenant acknowledges was hers.

The Tenant stated that the photographs do not depict the condition of the rental unit at the end of the tenancy.

The Witness for the Tenant #1 stated that she helped the Tenant clean the rental unit on January 28, 2009. She stated that she helped her clean the kitchen and that she helped vacuum the rental unit.

The Landlord is claiming compensation, in the amount of \$100.00, for painting. She stated that the rental unit was scheduled to be repainted but the \$100.00 was a token charge for restoring the rental unit to its original neutral colour. The Landlord submitted photographs to show that the walls in the rental unit were a pale yellow. The Tenant acknowledged painting the walls a pale yellow.

The Landlord is claiming compensation, in the amount of \$75.00, for cleaning the carpet. The Landlord submitted a document, dated October 28, 2006, which indicates that the Tenant agreed to pay \$75.00 to the Landlord at the end of the tenancy, for the purposes of having the Landlord shampoo the carpet. The Agent for the Landlord stated that this document was signed by both tenants prior to the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$135.00, for spraying the rental unit for fleas. The Landlord submitted a document, dated October 28, 2006, which indicates that the Tenant agreed to pay \$135.00 to the Landlord at the end of the tenancy, for the purposes of having the rental unit sprayed for fleas. The Agent for the Landlord stated that this document was signed by both tenants prior to the beginning of the tenancy.

The Tenant stated that she did not sign the above mentioned document.

The Landlord is claiming compensation, in the amount of \$350.00, for replacing kitchen floor tiles. The Agent for the Landlord stated that the Tenant replaced the flooring in the kitchen with black ceramic tiles and the Landlord estimates it will cost \$350.00 to replace these tiles. The Landlord did not submit a receipt or a written estimate in support of this cost estimate.

The Tenant acknowledged that she altered the kitchen floor tiles.

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The Landlord is claiming compensation, in the amount of \$90.00, for replacing a broken window in the rental unit. The Tenant acknowledged that this window was broken when a friend of the co-tenant broke into the rental unit.

The Landlord is claiming compensation, in the amount of \$60.00, for replacing a missing light fixture. The Tenant stated that she does not know what happened to the light fixture although she acknowledged it went missing during the last month of the tenancy.

The Landlord is claiming compensation, in the amount of \$80.00, for the cost of repairing a wall that had been damaged when the Tenant removed mirrored tiles. The Agent for the Landlord stated that it took approximately four hours to repair and paint the wall, for which the Landlord is seeking compensation at a rate of \$20.00 per hour. The Landlord submitted a photograph of the subject wall, which shows that the wall had been repaired with filler in preparation for painting.

The Tenant agrees that they removed the tiles but she stated that the wall was properly repaired and painted.

The Landlord is claiming compensation, in the amount of \$80.00, for a fire extinguisher that was missing from the rental unit.

The Tenant stated that she returned the fire extinguisher to the office, although she does not recall the date. She initially stated that the fire extinguisher was returned to the office because it was due for recertification. She subsequently stated that it was returned to the office because it had inexplicably “blown up”, although she contends nobody tampered with the item to cause it to discharge.

The Agent for the Landlord denied receiving a fire extinguisher from the Tenants. She stated that they did not recall the fire extinguishers for certification during this tenancy and that the fire extinguisher would have been immediately replaced if it had been discharged. The Landlord submitted a document, dated October 28, 2006, which indicates that the Tenant agreed to pay \$80.00 to the Landlord if the fire extinguisher in the rental unit is damaged or missing. This is the same document that has been previously discussed, which the Agent for the Landlord stated was signed by both tenants on October 28, 2006.

## Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord, which required her to pay monthly rent of \$754.00.

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I find that this tenancy ended on January 31, 2009, when the Tenant removed her personal property from the rental unit. Although I accept that the Tenant did not reside in the rental unit for the month of January, I find that she was still obligated to pay rent for that month because her personal property was in the rental unit and she did not give notice to end this tenancy prior to January 31, 2009, in accordance with section 45 of the *Act*. As the parties agree that the Tenant did not pay rent for January of 2009, I hereby find that the Tenant owes the Landlord \$754.00 in rent.

I find, on the balance of probabilities, that the rental unit required cleaning at the end of the tenancy. In reaching this conclusion, I relied heavily on the photographs (dated March 03, 2009) which show that a large amount of personal property was left in the rental unit. These photographs are consistent with the Tenant's acknowledgement that she left personal property in the rental unit. Although I accept that the Tenant and her witness may have completed some cleaning, I find that it could not have been properly cleaned without removing the personal items left behind.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she did not leave the rental unit in reasonably clean condition at the end of the tenancy and I find that she is, therefore, obligated to compensate the Landlord for any losses it incurred as a result of the Tenant's non-compliance with the *Act*. I accept that it would have taken the Landlord 6.5 hours to clean the rental unit as it was depicted by the photographs, and I find that the Tenant must compensate the Landlord for cleaning costs, in the amount of \$130.00. This award is based on an hourly rate of \$20.00, which I find to be reasonable in these circumstances.

I find that the Tenant painted the walls a pale yellow during the tenancy. I find that this colour is so light it would not have any significant impact on the Landlord's plan to repaint the rental unit. On this basis, I dismiss the Landlord's application for compensation, in the amount of \$100.00, for restoring the rental unit to its original colour. In reaching this conclusion, I was strongly influenced by the Agent for the Landlord's statement that the rental unit was scheduled to be repainted.

I find, on the balance of probabilities, that the Tenant did sign the document dated October 28, 2006, in which she agreed to pay \$75.00 to have the carpets shampooed at the end of the tenancy; she agreed to pay \$135.00 to have the rental unit sprayed for fleas; and she agreed to pay \$80.00 if the fire extinguisher in the rental unit is damaged or missing. I favoured the Agent for the Landlord's evidence over the Tenant's evidence regarding the signing of this document, primarily because the Tenant's signature on the document is remarkably similar to the signature on other documents written by the Landlord.

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As the Tenant signed a document agreeing to pay \$75.00 to the Landlord at the end of the tenancy to have the carpets shampooed, I find that the Tenant must pay this amount to the Landlord.

As the Tenant signed a document agreeing to pay \$135.00 to the Landlord at the end of the tenancy to have the rental unit sprayed for fleas, I find that the Tenant must pay this amount to the Landlord.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenants changed the kitchen floor tiles without authority from the Landlord. I find, however, that the Landlord submitted insufficient evidence to establish the cost of replacing the tiles on the kitchen floor. Although the Landlord provided its own estimate of the cost of repairs, I find that I can not award damages in this matter without documentary evidence that establishes the true cost of the damages. On this basis, I dismiss the Landlord's application for compensation for replacing the tiles on the kitchen floor.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the broken window that was broken by a friend of the co-tenant. I find, however, that the Landlord submitted insufficient evidence to establish the cost of replacing the window. Although the Landlord provided its own estimate of the cost of repairs, I find that I can not award damages in this matter without documentary evidence that establishes the true cost of the damages. On this basis, I dismiss the Landlord's application for compensation for replacing the broken window.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenants failed to replace the light fixture that went missing during the last month of this tenancy. I find, however, that the Landlord submitted insufficient evidence to establish the cost of replacing the light fixture. Although the Landlord provided its own estimate of the cost of the replacement, I find that I can not award damages in this matter without documentary evidence that establishes the true cost of the damages. On this basis, I dismiss the Landlord's application for compensation for replacing the light fixture.

I find that the Tenant did not fully repair the damage done to the wall when they removed mirrored tiles from the wall. In reaching this conclusion, I gave considerable weight to the photograph that shows the wall had been repaired in preparation for painting. I find it highly unlikely that the Landlord would have made these repairs if they were unnecessary.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenants did not fully repair the wall after removing mirrored tiles from the wall and I find that they are, therefore, obligated to compensate the Landlord for any losses it incurred as a result of the Tenants' non-compliance with the *Act*. I accept that it would have taken

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the Landlord 4 hours to repair and paint the wall as it was depicted in the photograph, and I find that the Tenant must compensate the Landlord for the repairs, in the amount of \$80.00. This award is based on an hourly rate of \$20.00, which I find to be reasonable in these circumstances.

I find that the Tenant is responsible for replacing the fire extinguisher that was missing from the rental unit. I find that the Tenant's evidence that she returned the fire extinguisher to the Landlord is not credible, largely because she gave inconsistent evidence in this regard. She initially stated that she returned the fire extinguisher for recertification and shortly thereafter stated that it had been returned because it had inadvertently discharged. I found the Agent for the Landlord's evidence that she had not received the fire extinguisher to be more credible.

As the Tenant signed a document agreeing to pay \$80.00 for a damaged or missing fire extinguisher, I find that the Tenant must pay this amount to the Landlord.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application.

## Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,304.00, which is comprised on \$754.00 in unpaid rent, \$500.00 in cleaning and damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby offset this monetary claim by the security deposit, pet damage deposit, plus interest on both deposits, in the amount of \$747.56.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$556.44. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 17, 2009.

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Dispute Resolution Officer