



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid utilities, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

At the beginning of the hearing the Landlord said he served the Tenant with a copy of his evidence package on June 3, 2009 by leaving a copy in her mail box at her residence. The Tenant also said that she served her evidence package on the Landlord by leaving a copy in his mail box at his residence on June 4, 2009. Both parties deny receiving the other party's evidence package. The Parties were given the opportunity to adjourn this matter to re-serve their evidence packages however they both agreed to continue the hearing today in the absence of the other's evidence package.

### Issues(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on January 1, 2004 and ended on February 28, 2009. Rent was \$1000.00 plus one third of the gas and electricity bills for the rental property. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Landlords claimed the Tenant is in arrears of her portion of the gas, electricity and cable bills for December 2008 and January and February 2009. The Landlords said they and the Tenant had an arrangement whereby they would give her 3 months of bills at a time and she would pay them. The Landlords said the last payment made by the Tenant was on January 23, 2009 in the amount of \$217.08 for September, October and November. The Tenant said she was not sure what period this payment was for but agreed that it could have been for the period alleged by the Landlords.

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The Tenant claimed that although cable was included in the rent (as per the written tenancy agreement) the Landlords asked her to pay one half of this bill and she agreed to do so. The Landlords also sought to recover a share of the water bills for a previous two year period however, the Parties' written tenancy agreement also shows that water is included in the rent.

The Landlords said they did a condition inspection report with the Tenant at the beginning of the tenancy which the Tenant denied. In any event, the Landlords said the rental unit was newly renovated at the beginning of the tenancy and no other tenants had lived there. The Landlords claimed that he initially asked the Tenant to do a move out inspection on February 7, 2009 but she wanted to wait until the end of the tenancy. The Landlords said they and the Tenant arranged to meet on February 28, 2009 to do a move out inspection but the Tenant did not call him and left the keys in his mail box. The Landlords also said they called the Tenant a few days later and left a voice mail message for her but she did not call back. The Tenant said the Landlords failed to show up on February 28, 2009 by 9:00 pm so she left the keys for them. The Tenant said one of the Landlords called her a few days later and said he was too ill to attend the inspection on February 28, 2009.

The Parties agree that the Tenant is responsible for 2 missing Venetian blinds and 4 damaged Venetian blinds. The Landlords provided an estimate that claimed it would cost \$330.00 to replace and install the blinds. The Tenant provided an online estimate that claimed it would cost \$212.00 USD to replace the blinds. The Parties also agree that the Tenant is responsible for a hole in a hallway wall. The Landlords provided an estimate that it would cost \$150.00 to repair. The Tenant provided an estimate that it would cost \$100.00 to repair. The Landlords claimed that the Tenant painted the living room and a bedroom a darker colour during the tenancy and he sought to be reimbursed \$450.00 to return those walls to a neutral colour. The Landlords admitted that they also re-painted the rest of the rental unit at the end of the tenancy. The Tenant argued that the colour was not that dark and would not have taken much to change to a neutral colour. The Tenant also argued that after a tenancy of 5 years, it was the Landlords' responsibility to paint the interior of the rental unit.

The Landlords also claimed that the Tenant (or her cat) damaged a piece of carpeting. They provided a copy of an estimate that said it would cost \$250.00 to repair the damage. The Tenant denied that she damaged the carpet and said that it was a piece of carpeting that never matched the other carpeting or fit properly. The Tenant said the piece of carpeting had simply pulled away from the wall and was not damage but reasonable wear and tear.

The Landlords said the Tenant did not clean the rental unit at the end of the tenancy and that it took them approximately 16 hours to clean it. As a result, the Landlords

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sought \$300.00 as compensation for general cleaning. The Tenant argued that she cleaned the rental unit and there is no basis for this part of the Landlords' claim. The Tenant admitted that a planter outside a window broke and that she spread the soil over the surrounding gravel. The Landlords claimed they were concerned the soil would prevent water from draining away from the window of the rental unit and therefore had to clean up the soil for which he sought \$300.00 as compensation.

The Landlords also claimed that the Tenant damaged a broken shower door, a lint trap on the dryer and removed a plastic garbage container from under the kitchen sink. The Landlords said it took two hours to repair the shower door plus \$10.00 in parts, that it will cost an estimated \$75.00 to replace the garbage canister and \$100.00 to install it. The Landlords claimed that he does not know what the cost will be to fix the dryer which was new at the beginning of the tenancy. The Tenant claimed that she asked the Landlords early in the tenancy to repair the shower door but they never did. The Tenant also claimed that a screw holding the dryer lint trap in place came off at some point during the tenancy from the vibration of the machine. The Tenant denied that there was a garbage can under the kitchen sink at the beginning of the tenancy.

The Landlords said that there was also water damage to an area of the laminate flooring in the living room at the end of the tenancy. The Landlords also said there are 3 pieces of laminate that appear to have water stains. The Landlords claimed that the Tenant had an aquarium in the same area and suggested that it could have been caused by a leak. The Tenant denied knowing anything about a water stain. The Tenant said there were flaws in the laminate at the beginning of the tenancy such that some pieces were not the same color.

## Analysis

I find on a balance of probabilities that the Tenant has arrears of gas and hydro payments for December 2008 and January and February, 2009. As the Tenant agreed to also pay cable, I find that she is also responsible for cable for those 3 months as well. However, I find that water is included in rent and therefore that Landlords cannot require the Tenant to pay a share of that bill for the past 2 years. The total of the Tenant's portion of the gas bills is \$285.62 and her portion of the hydro bills is \$125.07, however, those amounts must be reduced by the 4 days for March, 2009 when the Tenant was not living there. As a result I find that the Tenant owes **\$273.20** for gas and **\$119.52** for hydro as well as **\$90.15** for cable.

Section 32 of the Act says that a Landlord is responsible for maintenance and repairs and a Tenant is responsible for damages caused by her act or neglect but is not responsible for reasonable wear and tear. The Tenant agreed that she was responsible

for replacing the Venetian blinds and repairing a hole in the hallway but disputed the amounts claimed by the Landlord. I find that the Landlords' estimates for these items are reasonable and award him that amount. I note that the Tenant's estimate for blinds when adjusted to Canadian currency and additional expenses for shipping and installation were added, the amount would not be that far off. Consequently, I find that the Landlords are entitled to **\$150.00** to repair a hole in the wall and **\$330.00** for the cost of replacing and installing new blinds.

I find that there is insufficient evidence to conclude that the cost of a carpet repair is the responsibility of the Tenant. In particular, based on the photograph provided by the Landlords, there does not appear to be any pulls in the fibres. On the other hand, the gap (or damaged area) does appear to be consistent with the Tenant's argument that it has pulled away from the wall. In the circumstances, I find that this constitutes reasonable wear and tear and is not damage for which the tenant is responsible.

RTB Policy Guideline #1 says that a Landlord is responsible for painting the interior of the rental unit at reasonable intervals. It also says that any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition. In this case, I find that the Landlords did consent to the Tenant painting two rooms in a darker color. I also find that after a tenancy of 5 years, the Landlords would be responsible for repainting the interior of the rental unit. For both of these reasons, I find that the Landlords are not entitled to recover the cost of painting from the Tenant and that part of their claim is dismissed.

With respect to the Landlords' claim for damage to a shower door and lint trap of the dryer, I find that there is no evidence that the damage was caused by an act or neglect of the Tenant. Instead, I find that these things are more likely maintenance and repair matters that were the responsibility of the Landlords during the tenancy. Consequently, the Landlords' claim for damages to the shower door and dryer are dismissed. With respect to the Landlords' claim for damage to the living room floor, I accept the Landlords' evidence that the laminate was new and undamaged at the beginning of the tenancy. I also agree with the Landlords that the damage in question appears to be caused by water as there is a white stain and the seams in that area are lifting. Consequently, I find on a balance of probabilities that the Tenant is responsible for this damage and I award the Landlords the diminished value of the flooring at \$150.00.

I find that the Landlords' claim for \$300.00 for cleaning up soil from a planter is unreasonable and instead award them **\$25.00**. Section 17 of the Regulations to the Act states that a Landlord must give a tenant two opportunities to do a condition inspection and on the second occasion must give the Tenant a written Final Notice to Schedule a Condition Inspection. Section 36 of the Act says that a Landlord must do a condition inspection report even if the Tenant does not participate in an inspection. In this case,

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the Landlords did not do a move out condition inspection report and therefore there is no evidence to support their claim for general cleaning expenses and that part of their claim is dismissed.

In the absence of a move in condition inspection report, also find there is insufficient evidence to conclude that there was a garbage can in the rental unit at the beginning of the tenancy and that part of the Landlords' application is dismissed. However, as the Landlords have been successful in this matter, I find that they are entitled to recover their **\$50.00** filing fee for this proceeding. I order the Landlords pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Unpaid gas bill:	\$273.20
Unpaid hydro bill:	\$119.52
Unpaid cable bill:	\$90.15
Blinds:	\$330.00
Hole Repair:	\$150.00
Floor damage:	\$150.00
Soil Clean up:	\$25.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,187.87
Less: Security deposit:	(\$500.00)
Accrued interest:	<u>(\$17.69)</u>
Balance due:	\$670.18

## Conclusion

A monetary order in the amount of **\$670.18** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the order may be filed in the Provincial (Small Claims) Court of British Columbia 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 12, 2009.

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Dispute Resolution Officer