



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MND, 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 damage to the rental unit, 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, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord filed this Application for Dispute Resolution on May 12, 2009. Additional evidence from the Landlord was received by the Residential Tenancy Branch on August 11, 2009. The Agent for the Landlord stated that he sent the same package of evidence to the Tenant's residence on August 07, 2009, via registered mail. The Agent provided a tracking number for the package that was sent by registered mail. The Canada Post Website shows that a notification card was delivered to the Tenant on August 11, 2009, but the package has not yet been picked up.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2006; that they had a written tenancy agreement; that the Tenant was paying \$1,600.00 monthly rent at the end of the tenancy; that the Tenant paid a security deposit of

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\$750.00 on November 09, 2006; that the tenancy ended on April 30, 2009; and that the Tenant provided the Landlord with her forwarding address on, or before, May 01, 2009.

The Agent for the Landlord and the Tenant agree that they completed a condition inspection report at the beginning of the tenancy. The Agent stated that he provided the Tenant with a copy of that report shortly after it was completed, although the Tenant denies receiving it at that time.

The Agent for the Landlord and the Tenant agree that they met on April 28, 2009 for the purposes of completing a final condition inspection report. They agree that the rental unit was not fully cleaned on April 28, 2009 so arrangements were made to have the Landlord complete the report with an agent for the Tenant on April 30, 2009.

The Agent for the Landlord stated that he went to the rental unit at the agreed upon time on April 30, 2009 but he could not locate the agent for the Tenant. He stated that he waited fifteen minutes and then proceeded to his next appointment. He stated that the agent for the Tenant phoned him approximately ten minutes later but he could not return as had other responsibilities. He stated that he does not recall scheduling a third time for the condition inspection report.

The Agent for the Landlord stated that he provided a copy of the condition inspection report, which details the condition of the rental unit at the beginning and the end of the tenancy, to the Tenant in the second package of evidence that was mailed to her on August 07, 2009, which she stated she did not receive. He further stated that this document was mailed to the Residential Tenancy Branch on August 07, 2009.

This document was not available to me at the time of this hearing, either through an error on the part of the Landlord or on the part of Residential Tenancy Branch staff. I was able to render a decision in this matter without the benefit of this report, as the Landlord did not refer to this document in support of any of his claims.

The Tenant stated that she was advised by her agent that she was approximately ten minutes early for the meeting on April 30, 2009; that after waiting approximately fifteen minutes she left to pick up a coffee; and that she phoned the Agent for the Landlord when she returned from getting her coffee. The Tenant declined the opportunity to call her agent as a witness.

The Landlord is seeking compensation, in the amount of \$118.00, for general cleaning of the rental unit and for disposing of personal items that were left in the rental unit. The Landlord submitted photographs of the rental unit taken after the tenancy ended, which the Tenant acknowledged are a fair representation of the condition of the rental unit at the end of the tenancy. These photographs clearly show that there was personal

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property left in the rental unit at the end of the tenancy and that the rental unit was not properly cleaned.

The Landlord submitted copies of receipts that establish that the Landlord paid \$118.00 for cleaning the rental unit, including disposing of personal items. The Tenant does not dispute that the rental unit required cleaning, although she argues that the cost of the cleaning is excessive.

The Landlord is seeking compensation, in the amount of \$94.50, for cleaning the carpets. The Agent for the Landlord and the Tenant agreed that the carpets were not cleaned at the end of the tenancy and the Tenant readily agreed to compensate the Landlord for the cost of cleaning the carpets. The Landlord submitted a copy of a receipt that establishes that the Landlord paid \$94.50 for cleaning the carpets.

The Landlord is seeking compensation, in the amount of \$157.50, for repairing the carpet. The Agent for the Landlord stated that several spots were left on the carpet after they were cleaned and he hired a company to repair those stains with dye. The Landlord submitted photographs that demonstrate the carpets were stained at the end of the tenancy. The Landlord submitted a copy of a receipt that establishes that the Landlord paid \$157.50 for dying the stains that were left on the carpet.

As the Tenant did not have the opportunity to view the carpets after they were cleaned, she was unable to assess whether the stains were adequately removed from the carpet. She stated that she did not receive a copy of the receipt for repairing the carpet. The Landlord stated that a copy of this receipt was provided to her in the second package of evidence that was mailed to her on August 07, 2009, which she stated she did not receive.

The Landlord is seeking compensation, in the amount of \$26.16, for the cost of replacing light bulbs that burned out during this tenancy. The Landlord and the Tenant agree that four globe-shaped light bulbs in the bathroom were burned out and one halogen light bulb in the kitchen was burned out, although the Tenant contends that this constitutes normal wear and tear.

The Agent for the Landlord stated that he gave the new occupants permission to purchase new light bulbs and that he reimbursed them for the cost of the light bulbs, in the amount of \$31.64. He stated that his claim for \$26.16 was merely an estimate, as he did not have a copy of a receipt for the items they purchased when he filed this Application for Dispute Resolution.

The Landlord submitted a copy of receipt, in the amount of \$31.64, for the light bulbs that were purchased by the new occupants. This receipt shows that the new occupants

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purchased an unknown quantity of five different types of light bulbs. The Tenant stated that she did not get a copy of this receipt. The Landlord stated that a copy of this receipt was provided to her in the second package of evidence that was mailed to her on August 07, 2009, which she stated she did not receive.

The Landlord is seeking compensation, in the amount of \$5.00, for the cost of replacing keys to a storage area. The Tenant stated that she returned all of the keys, including the key to the storage area, to the Landlord via Purolator Courier Service. The Agent for the Landlord stated that he received the keys on May 04, 2009 and that he sent the Tenant an email on that date, in which he acknowledged receiving the keys. He acknowledged that he did not mention that keys were missing at that time. The Agent for the Landlord stated that he was not aware that keys to the storage area were missing until the new occupants advised him that it was not with the keys that provided to them.

The Landlord is seeking compensation, in the amount of \$10.00, for the cost of replacing a visitor's parking pass, which the Agent for the Landlord stated was not returned to him or to the building manager at the end of the tenancy. The Tenant stated that her agent returned the pass to the building manager on April 30, 2009. Neither the agent for the Tenant or the building manager appeared as witness at this hearing.

The Landlord is seeking compensation, in the amount of \$100.00, for the cost of replacing a free-standing cabinet, which the Agent for the Landlord stated was removed from the rental unit at the end of the tenancy. The Tenant stated that the subject cabinet was one of two cabinets that she moved into the rental unit during this tenancy. She stated that she left one of the cabinets in the rental unit at the end of the tenancy and that she took the subject cabinet with her at the end of the tenancy. The Landlord submitted no evidence to establish that the subject cabinet was in the rental unit at the beginning of the tenancy.

The Agent for the Landlord and the Tenant agree that shortly after this tenancy ended the Agent for the Landlord advised the Tenant that one of the two cabinets was missing, at which time the Tenant indicated that she did not know which cabinets the Landlord was speaking about. The Agent for the Landlord contends that the Tenant's subsequent statement that both cabinets belonged to her is indicative of her dishonesty. The Tenant contends that she simply did not understand which cabinets the Landlord was referring to, as she had taken one of the cabinets and she believed her agent had taken the second cabinet. I find that the Tenant offered a reasonable explanation for the misunderstanding and this conversation does not, in my view, taint the Tenant's credibility.

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The Landlord is seeking compensation, in the amount of \$131.25, for the cost of having an agent attend the rental unit on April 30, 2009 for the purposes of attending the second end-of-tenancy condition inspection report. I decline to consider this request, as I have no authority under the *Act* to award administrative costs of this nature.

The Agent for the Landlord stated that the Tenant registered a complaint with the Better Business Bureau, in which she mistakenly identified a third party as her landlord. He stated that she did not correct this error even when she was advised of her mistake, which he contends is indicative of her dishonesty. I find that it is more indicative of the hostility between these parties that was apparent during the hearing and I do not find that it taints the Tenant's credibility at this hearing.

## Analysis

Based on the Tenant's acknowledgement that the rental unit required cleaning at the end of the tenancy and on the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Based on the condition of the rental unit as depicted by the photographs, I find the claim of \$118.00 for cleaning to be reasonable, and I find that the Landlord is entitled to compensation in that amount.

As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$94.50, for cleaning the carpet in the rental unit, I find that the Landlord is entitled to compensation in that amount.

Based on the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that some stains on the carpet were not adequately removed when the carpets were cleaned. In reaching this conclusion, I was strongly influenced by the fact that the Landlord hired a company to dye some stains on the carpet, which would not have been necessary if the stains had been removed by the cleaners. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit undamaged and in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*.

The Agent for the Landlord declared that the Landlord paid \$157.50 for repairing the stains on the carpet, which is corroborated by the receipt that he submitted in evidence. Although the Tenant did not receive a copy of that receipt, I find that it was properly served on her in accordance with the *Act*. I also find that my consideration of this

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evidence does not unduly prejudice the Tenant because it simply corroborates the verbal testimony of the Agent for the Landlord, which seems credible in regards to the cost of these repairs. I therefore find that the Landlord is entitled to compensation in the amount of \$157.50 for the cost of repairing stains on the carpet.

Based on the Tenant's acknowledgement that there were five light bulbs burned out in the rental unit at the end of the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit undamaged at the end of the tenancy. I do not consider light bulbs to be reasonable wear and tear. In general, there is an expectation that landlords will ensure that all light bulbs are working at the beginning of the tenancy and that tenants will replace light bulbs that stop working during the tenancy. I therefore find that the Landlord is entitled to the cost of replacing five light bulbs.

I find that the Landlord has failed to establish the true cost of replacing five light bulbs. In reaching this conclusion I was strongly influenced by the fact that only two types of light bulbs needed replacement, yet the receipt that was provided by the new occupants show that five different types of light bulbs were purchased. I therefore find that I can not rely on this receipt to establish the cost of replacing the light bulbs as I can not conclude, with any reasonable certainty, that all of the bulbs represented on this receipt were actually used to replace the five subject light bulbs. In the absence of evidence that demonstrates the true cost of replacing the five missing light bulbs, I arbitrarily award the Landlord \$10.00 as compensation for replacing the light bulbs, which is a conservative estimate of the cost of replacing them.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant did not return a key to the storage area. In reaching this conclusion, I was strongly influenced by the email, dated May 04, 2009, in which the Agent for the Landlord acknowledged receiving keys from the Tenant and by the absence of evidence that shows how many keys were assigned to the Tenant at the beginning of the tenancy and how many were returned at the end of the tenancy. On this basis, I dismiss the Landlord's claim for compensation for copying a key to the storage area.

I find that the Landlord failed to establish that the Tenant did not return her visitor's parking pass. In reaching this conclusion I was strongly influenced by the absence of evidence from the building manager that refutes the Tenant's statement that her agent returned her parking pass to the building manager. As the Landlord has failed to establish that the parking pass was not returned, I dismiss the Landlord's claim for compensation for replacing the parking pass.



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I find that the Landlord failed to establish that the Tenant removed a free-standing cabinet that did not belong to her. In reaching this conclusion I was strongly influenced by the absence of evidence that establishes the subject cabinet was in the rental unit at the beginning of the tenancy. As the Landlord has failed to establish that there was a free-standing cabinet in the rental unit at the beginning of the tenancy, I cannot conclude that the Tenant removed a cabinet that did not belong to her. On this basis I dismiss the Landlord's claim for compensation for replacing the cabinet.

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

## Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$430.00, which is comprised on \$380.00 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain \$430.00 from the Tenant's security deposit and I order the Landlord to return the remaining \$320.00, plus \$23.25 in interest on the original amount of the security deposit.

Based on these determinations I grant the Tenant a monetary Order for the amount \$343.25. In the event that the Landlord 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 *Act*.

Dated: August 21, 2009.

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Dispute Resolution Officer