



# 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 indicated in the Details of Dispute portion of their application that they wished to offset any damages with the Tenant's security deposit and accordingly their application has been amended to include that claim.

At the beginning of the hearing the Tenant claimed that she did not receive the Landlords' evidence package however, the Landlords claimed that the evidence was included with the hearing package served on the Tenant by registered mail. Consequently, the hearing of this matter proceeded but this decision was reserved to today's date so that the Tenant could be re-served with the Landlords' evidence and respond to it. The Tenant did not provide a response within the time limit given for her to do so.

### Issues(s) to be Decided

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

### Background and Evidence

This tenancy started on November 28, 2008 and ended on June 30, 2009 when the Tenant moved out. Rent was \$900.00 per month. The Landlords claim that the Tenant was also responsible for paying utilities. The Tenant claims that it was only after the tenancy started that the Landlords asked her to pay utilities.

The Landlords claim that the Tenant had arrears of utilities of \$195.69 as of June 6, 2009 and owed a further \$105.55 for June 7 – 30, 2009. The Tenant said that she thought she had paid the utilities in full as the Landlords had estimated the final bill would be \$200.00 and she gave them a cheque for that amount dated June 22, 2009.

The Tenant said she did not receive any copies of the utility bills during the tenancy but that the Landlords advised her each month of the amount that was due.

The Landlords claim that they did a move in condition inspection report at the beginning of the tenancy but they did not provide a copy of it as evidence at the hearing. The Landlords also claimed that they tried to do a move out inspection with the Tenant at the end of the tenancy but that she was being unreasonable so they did it in her absence. The Tenant claimed that during the move out inspection the Landlords threw her out of the rental unit and locked the doors without allowing her to complete the Report. The Landlords said they did not recall giving a copy of the move out condition inspection report to the Tenant and a copy of it was not provided as evidence at the hearing. The Tenant claimed that she did not receive a copy of the move out inspection report.

The Landlords said that the Tenant had a cat and that it urinated on one of the bedroom carpets and the laundry room carpet. The Landlords claim that the carpets could not be salvaged by cleaning them and had to be replaced. The Landlords said they knew the Tenant had a cat because she advised their realtor it had urinated on a mattress. The Tenant denied that she had a cat, or that she advised the Landlords' realtor that she had a cat or that the carpets smelled of pet urine as alleged by the Landlords. The Tenant said the mattress in question had to be aired out because it had been placed on the damp carpet. The Tenant said she cleaned the carpets twice in the space of two weeks so that the rental unit would be clean for showings by the Landlords' realtor.

The Landlords also said that the Tenant broke a bathroom mirror and Venetian blinds. The Tenant did not dispute that these items were broken during the tenancy but argued that the bathroom mirror was not properly mounted and kept falling off and one day she accidentally stepped on it. The Landlords claimed that the Tenant changed the position of the mirror and re-mounted it improperly. The Tenant also argued that the Venetian blinds were old and the slats had already started to fall out. The Tenant claimed that the blinds could have been replaced for no more than \$15.00.

The Landlords claimed that the Tenant put 5 dents or gouges in the side of the refrigerator and tried to conceal them by painting over them and moving that side of the refrigerator against a wall. The Tenant denied that she damaged the refrigerator and argued that both sides of the refrigerator had dents at the beginning of the tenancy.

The Landlords also claimed that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. In particular, the Landlords said they had to clean one of the bathrooms, windows and window sills, a stove and behind appliances. The Tenant claimed that the Landlords gave her a list of cleaning to be done for the end of the tenancy and that she cleaned everything specified on that list. The Tenant argued

that she kept the rental unit clean for showings by a realtor and that it was “spotless” at the end of the tenancy.

## Analysis

I find on a balance of probabilities that there was an agreement that the Tenant would pay utilities. However, the Landlords provided only one utility bill as evidence at the hearing. Therefore there is no evidence to corroborate the Landlords’ allegation that the Tenant had arrears. In the absence of utility bills showing the amounts owed each month by the Tenant and given the evidence of the Tenant that she believed there would be no arrears after her last payment in June for \$200.00, I find that there is insufficient evidence of unpaid utilities and that part of the Landlords’ claim is dismissed.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit clean and undamaged except for reasonable wear and tear.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days respectively). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

In this case, the Landlords did not provide a copy of the move in condition inspection report and as a result there is no other evidence of the condition of the rental unit at that time. I also find that the Landlords did not complete a move out condition inspection report with the Tenant at the end of the tenancy or provide her with a copy of the Report they prepared (in the Tenant’s absence) as required by the Regulations to the Act. Consequently, there is only the verbal evidence of the Landlords regarding the damages to the rental unit.

As the Landlords are the ones alleging that the Tenant caused the damages in question, they bear the onus of proving it on a balance of probabilities. Where the Tenant disputes those allegations, the Landlords will need additional, corroborative evidence to prove that the Tenant caused the damages in question. In this case, the Landlords did not provide any corroborating evidence. Consequently, I find that there is insufficient evidence to conclude that the Tenant damaged the carpets or refrigerator and those parts of the Landlords’ claim are dismissed. For the same reasons, I find that there is insufficient evidence that the rental unit was not reasonably clean at the end of the tenancy and that part of the Landlords’ claim is also dismissed.

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The Tenant admitted to damaging a mirror and blinds. I do not give a lot of weight to the Tenant's argument that she was not responsible for breaking the mirror because it kept falling due to not being mounted properly. If that was the case, then the Tenant had an obligation under s. 32 of the Act to ask the Landlords to repair the hanging mechanism on the mirror but did not do so. Similarly, if the blinds were damaged solely because of their age, then the Tenant should have asked the Landlords to replace them. Instead, the Tenant agreed to assume the cost of replacing them which I find was because she was responsible for damaging them. Consequently, I find that the Landlords are entitled to be compensated \$27.98 for the mirror and \$21.01 for the blinds.

As the Landlords have been unsuccessful on most of their claims in this matter, they are not entitled to recover the filing fee for this proceeding. I order the Landlords pursuant to s. 38(4), 62(3) and 72 of the Act to keep **\$48.99** of the Tenant's security deposit and to return the balance of it with accrued interest to the Tenant as follows:

Security deposit:	\$400.00
Accrued interest:	<u>\$0.56</u>
Subtotal:	\$400.56
Less: Damage award:	<u>(\$48.99)</u>
Balance owing:	\$351.57

## Conclusion

A Monetary Order in the amount of **\$351.57** has been issued to the Tenant and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, 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: September 08, 2009.

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Dispute Resolution Officer