



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for damages to the rental unit and to recover expenses for repairs and cleaning as well as the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

### Issues(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 the Tenants' security deposit?

### Background and Evidence

This tenancy started on October 1, 2008 and ended on or about June 30, 2009 when the Tenants moved out. The Tenants paid a security deposit of \$650.00 on September 18, 2008.

The Landlord said that the Tenants gave her notice that they would be moving out on June 30, 2009 however when she arrived at the rental unit at 1:00 p.m. that day, the Landlord claimed that the Tenants were still living there and had packed very little.

The Landlord said that she had planned to go through the rental unit with a painter to see if any touch ups were required but when she viewed the rental unit that day, she found that all of the walls were damaged with nail holes, gouges, tape, marks and dirt. The Landlord also said that the carpets were stained and soiled. The Landlord claimed that the carpets were new at the beginning of the tenancy and that the rental unit had been newly painted.

The Landlord said she contacted the Tenants at 5:00 p.m. on June 30, 2009 and they said they would vacate the rental unit later that evening, however she did not think that was realistic and told them she would meet them at 10:00 a.m. the following day to do a move out condition inspection. The Landlord said that when she arrived the following morning, she found a large amount of garbage and abandoned items in the front and

back yards and in a storage shed. The Landlord claimed that it took 3 pick up truck loads to dispose of these items.

The Landlord claimed that because the Tenants had moved hastily, they didn't clean the interior of the rental unit or the carpets. The Landlord also claimed that the front door knob and lock set was missing and repairs had to be made to a bathtub, a dishwasher and window screen in the master bedroom. The Landlord said that due to the need to do cleaning, repairs and repaint, the new tenant could not move in until July 15, 2009 and as a result, she lost ½ of a month of rent.

The Tenants claimed that they believed they did not have to move out until July 1, 2009 but agreed to move out on June 30, 2009 and in fact, moved out at 11:00 p.m. that day. The Tenants also claimed that the Landlord never mentioned doing a move out condition inspection but instead only asked them when they would be moving out.

The Tenants claimed that they had moved some of their belongings 2 weeks earlier and that because one of them was a mover by occupation, they were able to pack and move their belongings quickly and clean with the assistance of some co-workers and friends. The Tenants claimed that they cleaned everything at the end of the tenancy except the bathtub, refrigerator and counter tops. The Tenants said they steam cleaned the carpets 2 weeks before they moved out and used runners when moving so that it did not get dirty. The Tenants denied that the carpets were soiled and stained at the end of the tenancy but argued that the Landlord cleaned them 2 weeks after the tenancy ended and therefore they could have been soiled after the tenancy ended by the Landlord's painter or handyman.

The Tenants also denied that the rental unit was newly painted at the beginning of the tenancy and claimed that there were large anchor screws left in the walls from the previous tenant. The Tenants also claimed that there was excessive humidity in the rental unit which caused paint to peel around the sky light in the bathroom and mould and mildew to grow in the bedrooms. The Tenants said that spackle had also cracked and fallen off in places. The Tenants argued that the fact the Landlord showed up with a painter on June 30, 2009 indicated that she planned to re-paint the rental unit even before she alleged damages. The Tenants also claimed that there was a wiring or electrical problem with the rental unit because light bulbs were frequently burning out.

The Tenants denied leaving items behind with the exception of a tarp, windshield wiper fluid, antifreeze, some scrap wood, some recycling and one bag of garbage. The Tenants claimed that there were already some items in the shed at the beginning of the tenancy. The Tenants admitted that they removed the front door knob but claimed they did so because it was broken and they left it in the rental unit with the key. The Tenants also claimed that they repaired the bathtub 6 weeks before they moved out with the

Landlord's knowledge and consent. The Tenants denied that the dishwasher was broken and said that the window screen was damaged at the beginning of the tenancy as shown on the move in condition inspection report.

In support of their position that they left the rental unit clean and undamaged at the end of the tenancy, the Tenants called witnesses who admitted that it was a hurried move but claimed that the rental unit looked "fine" or "normal" when the Tenants vacated it.

## Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

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). 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 the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The move in condition inspection report signed by both Parties shows that the rental unit was generally in good condition at the beginning of the tenancy. Section 21 of the Regulations to the Act says that a properly completed condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary. Consequently, I conclude that there were no damages to the rental unit at the beginning of the tenancy other than what was indicated on the move in condition inspection report.

However, the Landlord did not complete a condition inspection report at the end of the tenancy and did not provide any other reliable evidence (such as photographs or witness statements) to corroborate her claims. In particular, the Tenants disputed that they left 3 truck loads of garbage or that the rental unit and carpets were not reasonably clean at the end of the tenancy. The Tenants admitted, however that there were a few things they did not clean. I find that the Landlord's invoice for carpet cleaning is useful only as evidence of the condition of the carpet almost 2 weeks after the tenancy ended. I do not find the Landlord's invoice for general cleaning very helpful as it does not indicate what cleaning was done. In the absence of any other evidence to corroborate the Landlord, I find that there is only sufficient evidence to support approximately 2

hours of general cleaning or **\$50.00** and that there is insufficient evidence to support the balance of her claims for general cleaning and carpet cleaning and they are dismissed. I find that there is evidence that the Tenants left a few articles behind and I award the Landlord **\$50.00** for disposing of them.

For similar reasons, I find that there is insufficient evidence that the Tenants caused damages to the walls beyond normal wear and tear. The Tenants denied that they caused any damages and claimed that due to moisture issues in the rental unit, some of the walls had mould and mildew. The Landlord provided invoices for labour and painting supplies but no evidence to corroborate her claim that painting was necessary due to some act or neglect of the Tenants. Consequently, I find that there is insufficient evidence to conclude that the Tenants should be responsible for the cost of painting the rental unit and that part of the Landlord's claim is dismissed.

The Landlord admitted that some of the repair expenses she claimed were for maintenance and not the responsibility of the Tenants. However, the Landlord claimed that the Tenants were responsible for parts and labour to repair a dishwasher, a damaged window screen, a bathtub diverter valve, and front door lock set. The Landlord said she believed the Tenants were responsible for the diverter valve because they never told her it was broken. However, this was contradicted by the Tenants who said they did tell the Landlord about it and repaired it. Consequently, I find that there is insufficient evidence to conclude that this was damaged by an act or neglect of the Tenants and that part of the Landlord's claim is dismissed.

The Tenants argued that the dishwasher was in working order on the last day of the tenancy. The invoice provided by the Landlord's handyman states that there was a leak which he believed was due to the Tenants using the wrong type of soap (which the Tenants denied). However, there is no other evidence that the alleged leak was caused by some act or neglect of the Tenants rather than reasonable wear and tear and as a result, that part of the Landlord's claim is dismissed.

Based on the move in condition inspection report, I find that the window screen in the bedroom was already damaged at the beginning of the tenancy and as a result, that part of the Landlord's claim is also dismissed. I find that there is no evidence that the front door knob was broken at the beginning of the tenancy and conclude that it was damaged during the tenancy. I find it unlikely that the knob was damaged due to normal wear and tear and as a result, I find that the Tenants are responsible for the cost to replace it of **\$165.27**.

The Tenants argued that they should not be responsible for the cost of replacing light bulbs because there was a defect in the rental unit's wiring. However, the Tenants did not provide any evidence in support of this allegation and as a result, I find that they are

Residential Tenancy Branch  
Ministry of Housing and Social Development

responsible for replacing any burned out light bulbs at the end of the tenancy. Consequently, I find that the Landlord is entitled to recover **\$22.35**.

As I have found that there is insufficient evidence to conclude that the Tenants caused most of the damages alleged by the Landlord, I find that there are no grounds for awarding her a loss of rental income of one-half of a month due to the need to repair those damages and that part of her claim is also dismissed. As the Landlord has only been successful on a few of her claims in this matter, I decline to award her reimbursement of her filing fee and that part of her claim is dismissed. In summary, I find that the Landlord has made out a claim for \$287.62.

Section 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished if she does not complete a move out condition inspection report. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$237.62 from the Tenants' security deposit and accrued interest to compensate her for the damages. I order the Landlord to return the balance of the security deposit and accrued interest to the Tenants as follows:

Security deposit:	\$650.00
Accrued interest:	<u>\$2.77</u>
Subtotal:	\$652.77
Less: Damage award:	<u>(\$287.62)</u>
Balance Owing:	\$365.15

## Conclusion

A Monetary Order in the amount of **\$365.15** has been issued to the Tenants 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. 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: November 18, 2009.

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Dispute Resolution Officer