



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit and to recover the filing fee for this proceeding as well as to keep the Tenants' security deposit in payment of those amounts.

### 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 fixed term tenancy started on November 1, 2008 and was to expire on October 1, 2009, however it ended on July 31, 2009 when the Tenants moved out. Rent was \$1,800.00 per month. The Tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The Landlord did a move in condition inspection report with the Tenants at the beginning of the tenancy. At the end of the tenancy, the Landlord did an inspection of the rental unit on her own on August 1, 2009 and made a list of deficiencies. On August 3, 2009, the Tenants did a move out condition inspection of the rental unit with an agent of the Landlord's and completed a report.

The Landlord claimed that the Tenants did not give her written notice that they were ending the tenancy early and as a result, she sought a loss of rental income for one month. The Tenants claim that they wanted to stay for the term of the tenancy but the Landlord advised them that she would be moving back into the rental unit so they both agreed that the Tenants would move out and that the Landlord did not require written notice. The agent for the Landlord claimed that the Landlord had no intention of living in the rental unit, however, he had no knowledge if the Landlord had made any attempts to re-rent the rental unit for August 2009.

The Landlord also claimed that the Tenants broke a ceramic tile by the fireplace, left a water stain on the hardwood floor in the entrance and left stains on a carpet in the family room and dining room. The Landlord removed the carpets and replaced them with hard wood flooring but claimed compensation based on the current replacement cost of the same carpets.

The Tenants admitted that they were responsible for damaging the ceramic tile and staining the carpets but denied that there was a water stain on the hardwood floor as the Landlord alleged. The Tenants claimed that nothing was found during the move out inspection which occurred only after all of their belongings had been removed from the rental unit. The Tenants argued that the Landlord advised them in approximately April of 2009 that she was planning on replacing the carpets with hardwood flooring. The Tenants also argued that the stains on the carpet were very light and therefore it was unreasonable for the Landlord to replace them.

## Analysis

Section 45(2) of the Act states that a Tenant of a fixed term tenancy cannot end a tenancy earlier than the date set out in the tenancy agreement as the last day of the fixed term. If a Tenant ends a tenancy earlier, they may be liable for any loss of rental income that the Landlord suffers. However, s. 7(2) of the Act requires a Landlord to mitigate their losses by taking reasonable steps to try to re-rent the rental unit as soon as possible.

I find on a balance of probabilities that there was a verbal agreement that the Tenants would give up possession of the rental unit to the Landlord on July 31, 2009 for her use. Even if the Tenants unilaterally ended the tenancy early as the Landlord alleged, there is no evidence that the Landlord made any attempts to re-rent the rental unit and as a result, she would not be entitled to recover a loss of rental income for August 2009 for that reason. Consequently, the Landlord's application for a loss of rental income is dismissed.

Section 37 of the Act says that a Tenant is responsible for repairing any damage to the rental unit caused by their act or neglect but is not responsible for reasonable wear and tear.

Section 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Act and Regulations is evidence of the condition of the rental unit on the date of inspection unless the landlord or tenant has a preponderance of evidence to the contrary.

I find that the list of deficiencies prepared by the Landlord on August 1, 2009 is not a condition inspection report in that it does not contain all of the information that must be included as set out in s. 20 of the Regulations to the Act. Consequently, I find that the Landlord's list of deficiencies is of little evidentiary value and unreliable given that the Landlord was not present at the hearing to be questioned on it. I also find that the photographs provided by the Landlord are not reliable because they were taken

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approximately 10 days after the tenancy ended and without the Tenants present. Consequently, I give the Landlord's photographs little weight especially where they are disputed by the Tenants.

As a result, I find that the condition inspection report completed on August 3, 2009 is the best evidence of the condition of the rental unit at the end of the tenancy. The Landlord argued that the water stain on the hardwood floor was overlooked by the Landlord's agent during the move out inspection. However, if the stain was overlooked at that time then it is equally possible that it could have been overlooked during the move in inspection. Consequently, I find that there is insufficient evidence that the Tenants damaged the hard wood floor during the tenancy and that part of the Landlord's application is dismissed.

The Tenants admitted that they are responsible for 4 stains on carpets in two rooms of the rental unit. The Landlord provided no evidence as to whether she tried to salvage the carpets by having them treated. Furthermore, the uncontradicted evidence of the Tenants was that the Landlord advised them that she planned to have the carpets removed in any event and to replace them with hard wood. In the circumstances, I find that there is insufficient evidence that the carpets had to be replaced due to some act or neglect of the Tenants and as a result, I award the Landlord **\$150.00** representing the diminished value of the carpets due to the stains.

The Tenants also admitted that they were responsible for damaging a ceramic tile. The invoice provided by the Landlord combines the cost of this repair with the cost of refinishing the hardwood floor. In the absence of any evidence as to the cost of repairing only the ceramic tile, I award the Landlord **\$75.00**. As the Landlord has only been partially successful in this matter, I find that she is entitled to recover one-half of her filing fee for this proceeding or **\$25.00**.

I order the Landlord pursuant to s. 38(4) of the Act to keep \$225.00 of the Tenants' security deposit to compensate her for the damages. I further order the Landlord to return the balance of the Tenants' security deposit plus accrued interest to them as follows:

Security deposit:	\$900.00
Accrued interest:	<u>\$2.25</u>
Subtotal:	\$902.25
Less: Damages:	<u>(\$225.00)</u>
Balance owing:	\$677.25



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## Conclusion

A monetary order in the amount of **\$677.25** 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: December 02, 2009.

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Dispute Resolution Officer