

## Decision

### Dispute Codes:

MND, MNSD; MNDC; FF

### Introduction

This is the Landlord's application for a Monetary Order for damage to the rental unit and compensation for damage or loss; to retain the security and pet deposits in partial satisfaction of his monetary award, and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

### Issues to be Decided

- Is the Landlord entitled to a Monetary Order for damages, and if so, in what amount?

### Background and Evidence

This tenancy started on February 1, 2008, and ended on October 31, 2009. Monthly rent was \$1,550.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$775.00 and a pet deposit in the amount of \$225.00 on January 21, 2008. A copy of the tenancy agreement was entered in evidence.

There was no Condition Inspection Report completed at the beginning of the Tenancy. A Condition Inspection Report was completed at the end of the tenancy on October 31, 2009, and a copy was entered in evidence.

Both parties provided photographs in evidence, purported to be taken at the time the Tenants moved out of the rental unit.

The female Tenant attended at the move-out inspection, but did not agree to all of the damages recorded on the Report. She indicated on the Condition Inspection Report that the “holes left in the walls are normal wear and tear” and “landlord did not give 24 hour written notice that rental unit needs to be vacated at 1:00 P.M. Therefore cleaning was rushed.”

The Landlord is claiming damages, as follows:

Description	Receipt provided	Amount claimed
Cleaning the rental unit	Yes	\$77.00
Drywall repairs and paint	Yes	\$105.00
Painting touch up and cleaning	Yes	\$225.00
Repairs to blind, stool, sundeck rail, shower spray bracket and install ceiling light	Yes	\$334.00
Landlord's labour: painting and cleaning	No	\$126.00
Landlord's labour: 2 <sup>nd</sup> coat of paint	No	\$72.00
Landlord's labour: repairs to lawn	No	\$108.00
Cost of supplies (paint and brushes)	Yes	\$71.00
Cost of supplies (grass seed)	Yes	\$60.89
Cost of supplies (soil)	Yes	\$13.10
Dump fees to dispose of Tenants' refuse	Yes	\$50.68
TOTAL CLAIM		\$1,242.67

The Landlord testified that he hired two cleaning companies because he wanted to ensure the cleaning was completed in time for the new Tenants to move in the next day.

The Tenants disputed the amount claimed, and the damages they are responsible for. They agreed that they are responsible for the damage to the upholstered stool, the sundeck rail and venetian blinds. The female Tenant stated that she ran out of time while cleaning the rental property and agreed that she did not clean behind the fridge; inside the stove elements; the oven; and the sliding track to the patio door. The Tenants stated that \$250.00 was a fair amount to compensate the Landlord for these items.

The Tenants testified that the rental property did not have regular curbside garbage removal, and that they had a verbal agreement with the Landlord during the tenancy that he would remove their garbage from the rental property. The Tenants stated that at the beginning of the tenancy there was no shower rod in the bathroom. They installed a new shower rod and had an agreement with the Landlord that they would leave the shower rod in exchange for the Landlord agreeing to remove their refuse at the end of the tenancy.

The Tenants testified that there were some small nail holes in the walls, left by pictures, but they patched the holes and applied touch-up paint prior to moving out of the rental unit.

The Tenants testified that the damage to the lawn may have been caused by the Landlord's defective lawnmower, and the male Tenant did some patching work the day before the Tenants moved out.

The Landlord testified that there was an oral agreement that he would remove ordinary household garbage on a regular basis, but not other refuse. The Landlord stated that the Tenants would bring the garbage to him and he would take it to the dump. The Landlord testified that he had agreed to dispose of the refuse at the end of the tenancy if the Tenants left the shower rod and curtain, but the Tenants had ripped the shower rod out of the wall.

The Landlord testified that the Tenants had put drywall mud on some, but not all, of the holes and had left 50+ holes, including small picture holes. He stated that the patching was noticeable where the Tenants had bolted shelves on to the walls. The Landlord stated that the Tenants had taken down some of the lighting fixtures and had not reinstalled them all when they moved out.

The Landlord agreed that his lawn tractor had scalped the lawn in some spaces two months before the Tenants moved out, but in a different area. The Landlord stated that those spots had already been repaired.

### Analysis

Paragraph 14.6 of the tenancy agreement states: “The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.” The female Tenant agreed that she was rushed and did not fully clean the rental unit at the end of the tenancy. The Landlord supplied copies of two invoices for cleaning, from two different cleaning companies. The invoice in the amount of \$77.00 was for 3.5 hours cleaning in the kitchen. That invoice includes a notation that a “surface cleaning” had been done but, in the cleaner’s opinion, the rental unit was not “move in clean”. The other invoice was for 4.5 hours of cleaning in the remainder of the house. The Landlord also seeks compensation for his labour in cleaning the rental unit.

At the end of a tenancy, a tenant is required to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. “Reasonably clean and undamaged” is a matter of opinion, however it is clear that tenants are not required to leave a rental unit in “as new” condition. Based on the testimony and documentary evidence provided by both parties, I find that the Tenants did not complete the cleaning of the rental unit prior to leaving, however I further find that the Landlord’s perception of “reasonably clean and undamaged” is a higher standard than the acceptable standard. For example, the Landlord expected the Tenant’s to restore the walls in the rental unit to perfect condition, including filling and sanding the small holes left by pictures and repainting the entire wall. Small holes left by pictures are considered to be normal wear and tear, in the absence of any clause in the tenancy agreement stating otherwise. I accept the Landlord’s testimony that there were larger holes left by mounting shelves into the wall, and by the shower rod.

For the reasons stated above, I find that the Landlord is entitled to some, but not all, of the amount claimed for cleaning, sanding and painting. I allow the amount of \$66.00 for cleaning (3 hours @ \$22.00 per hour) and \$50.00 for patching, sanding and paint touch-ups.

The Tenants agreed that their cat had damaged the upholstered stool and the blinds. The Tenants further agreed that they were responsible for the damage to the sundeck rail. The invoice supplied by the Landlord for these items also includes the cost of installing a lighting fixture and replacing a loose shower spray bracket. The Tenants did not have time to replace the lighting fixture. The invoice is broken down into parts and labour @\$28.00 per hour for these items. The amount of time claimed for replacing the lighting fixture is one hour, which I find to be excessive. I allow labour costs in the amount of \$7.00 (15 minutes) for installing the light fixture. I find that the loosening of a shower spray bracket is normal wear and tear, and therefore this portion of the Landlord's claim is dismissed. Therefore, I allow the amount of \$275.00 for these items (\$100.00 for materials and \$175.00 for labour).

I find that the Tenants were responsible for the removal of the items depicted in the documentary evidence, and grant the Landlord's monetary claim for the amount of \$50.68 for dump fees.

The lawn damage depicted in the photographs entered in evidence appear to be holes dug by an animal, rather than swath marks that would be made by a lawn tractor. I accept the Landlord's testimony that they were caused by the Tenant's dog. The Landlord seeks to recover the cost of \$60.89 for grass seed, however, the holes are not large enough to require that amount of seed. The Landlord also seeks to recover his labour costs in the amount of \$108.00 (6 hours at \$18.00 per hour), which I find to be excessive considering the size of the holes. I award the Landlord a nominal amount of \$20.00 for repairing the holes left by the Tenant's dog.

The Landlord has been partially successful in his application and is entitled to recover the filing fee from the Tenants.

The Landlord has established a monetary award, calculated as follows:

Description	Amount
Cleaning	\$66.00
Filling, sanding and touch-up of wall damage	\$50.00
Repairs to upholstered stool; replacement of blinds and sundeck rail; and installation of lighting fixture	\$275.00
Dump fees	\$50.68
Repairing lawn	\$20.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$511.68

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply a portion of the security deposit and pet deposit in total satisfaction of his monetary award. The remainder of the security deposit and pet deposit, together with accrued interest in the amount of \$14.18, is to be returned to the Tenants forthwith, calculated as follows:

Description	Amount
Security deposit	\$1,000.00
Accrued interest	\$14.18
Less Landlord's monetary award	<u>\$511.68</u>
TOTAL DUE TO TENANTS	\$502.50

### Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of \$502.50 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 26, 2010