



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing 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, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant acknowledged receiving a package of evidence from the Landlord. The Tenant submitted no evidence.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to sections 38, 67, and 72(1) of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2007; that they do not have a written tenancy agreement; that on, or about, March 01, 2010 the Tenant gave written notice of her intent to vacate the rental unit on April 01, 2010; that the Tenant vacated the rental unit on April 01, 2010; and that the Tenant was paying monthly rent of \$835.00 during the latter portion of this tenancy.

The Landlord and the Tenant agree that a Condition Inspection Report was not completed at the beginning or the end of this tenancy; that the Landlord never gave the Tenant written notice of a time when a Condition Inspection Report would be completed; and that the Tenant did not provide the Landlord with her forwarding address, in writing, when this tenancy ended.

The Landlord testified that the Tenant paid a security deposit of \$375.00 several days prior to April 01, 2007. The Tenant testified that she paid a security deposit of \$390.00 approximately one week prior to April 01, 2007. Neither party submitted evidence to corroborate their testimony. In the Landlord's written submission she indicated that the Tenant's security deposit plus interest, in the amount of \$397.00, should be applied to the Tenant's liabilities.

The Landlord is claiming compensation, in the amount of \$44.80, for replacing a carpet in the rental unit plus \$32.00 compensation for the two hours she spent installing the carpet. The Tenant acknowledged that the carpet was damaged during the tenancy and she agrees that the Landlord is entitled to compensation for replacing the carpet.

The Landlord is claiming compensation, in the amount of \$320.00, for the twenty hours she spent cleaning the rental unit at the end of the tenancy plus \$12.00 for supplies used for cleaning. She submitted a receipt that corroborates she paid more than \$12.00 for various supplies.

The Landlord stated that the fridge and stove were not cleaned; that there was garbage left in the rental unit; that she had to clean the walls, some of which were marked with crayon; that she had to wash the walls and cupboard around the stove; that she had to wash the floors; and that she had to wash the windows and the window coverings.

The Tenant agreed that the fridge and stove were not cleaned; that there was garbage left in the rental unit; and that she did not wash the windows and the window coverings at the end of the tenancy. She stated that the walls and the cupboard near the stove were cleaner at the end of the tenancy than they were when she moved into the rental unit. She stated that she washed the floors and the walls at the end of the tenancy.

The Landlord submitted photographs to show that the rental unit required cleaning, however she did not submit photographs that establish the floors or the walls needed cleaning, although the photographs do show some damage to the walls.

The Landlord is claiming compensation, in the amount of \$16.76, for paint supplies plus \$32.00 compensation for the two hours she spent painting walls in a portion of the kitchen and an area beside the stairs. She stated that these areas were marked with pen/markers, had black marks on them, and were gouged in areas from a freezer. She submitted photographs that show the walls were in need of painting. She stated that the walls were last painted in 2006.

The Tenant acknowledged that the walls were marked during her tenancy but she contends that there were marks on the walls at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$400.00, for loss of revenue. The Landlord stated that she advertised the rental unit in March of 2010; that several prospective tenants viewed the unit in March but she was unable to find a tenant because the rental unit was messy and did not show well; and that she did not find a

new tenant until April 18, 2010. She contends that she could not find a new tenant prior to April 18, 2010 due to the cleanliness of the rental unit at the end of the tenancy and the need to replace the carpet. She stated that she works six days per week and that she could not finish cleaning and repairing the rental unit until April 17, 2010.

### Analysis

Based on the undisputed testimony provided at the hearing, I find that this tenancy began on April 01, 2007; that it ended on April 01, 2010; and that the Tenant was paying monthly rent of \$835.00 during the latter portion of this tenancy.

Section 13(1) of the *Act* requires landlords to prepare a written tenancy agreement for every tenancy that begins after January 01, 2004. Section 13(2)(vii) of the *Act* requires that the written tenancy agreement set out the amount of the security deposit and the date that it was or must be paid. I find that the Landlord failed to prepare a written tenancy agreement; to record the amount of the security deposit; or to record the date the deposit was paid. In the absence of written documentation, I must rely on the testimony of the parties regarding the amount of the security deposit and the date it was paid.

In these circumstances the Tenant contends that she paid a security deposit of \$390.00 and the Landlord contends that a deposit of \$375.00 was paid. I favor the testimony of the Tenant over the Landlord in regard to the amount of the security deposit, as the Landlord's written declaration that the Tenant is entitled to apply her security deposit, plus interest, in the amount of \$397.00, to her liabilities is more consistent with the Tenant's testimony.

There is a general legal principle that places the burden of proving a fact 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.

As the Tenant agreed that she damaged the carpet in the rental unit and that the Landlord is entitled to compensation for replacing it, I find that the Landlord is entitled to compensation for replacing the carpet, which includes \$44.80 for purchasing the carpet and \$32.00 for the time she spent installing it.

After hearing the conflicting testimony regarding the cleanliness of the rental unit, 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 damages that flow from the Tenant's failure to comply with the *Act*.

In these circumstances the Landlord and the Tenant agree that the fridge and stove required cleaning; that garbage was left in the rental unit; and that the Tenant did not wash the windows and the window coverings at the end of the tenancy. I find,

therefore, that the Landlord is entitled to compensation for the time she spent cleaning these areas.

I find that the Landlord failed to establish that the walls and the cupboard near the stove were less clean at the end of the tenancy than at the beginning of the tenancy. In reaching this conclusion, I note that the Landlord failed to complete a Condition Inspection Report at the beginning of the tenancy, which would have helped to establish the cleanliness of this area. As the Landlord has failed to establish that this area was not left in the same condition it was in at the beginning of the tenancy, I find that she has failed to establish that she is entitled to compensation for cleaning this area.

I find that the Landlord failed to establish that the floors and walls needed cleaning at the end of the tenancy. In reaching this conclusion, I note that no photographs were submitted to corroborate this claim or to refute the Tenant's testimony that they were cleaned. As the Landlord has failed to establish that these areas were not reasonably clean at the end of the tenancy, I find that she is not entitled to compensation.

Based on the amount of cleaning I determined was required, I find that the Landlord is entitled to compensation for ten hours of labour, at a rate of \$16.00 per hour, which I find to be reasonable remuneration for labour of this nature. I also find that the Landlord is entitled to the \$12.00 she claimed for cleaning supplies, as she has established that she paid more than that for supplies used to clean the rental unit.

Section 37(2) of the *Act* requires Tenants to leave a rental unit undamaged, except for "reasonable wear and tear". After viewing the photographs submitted in evidence, I find that the damage to the walls constitute "reasonable wear and tear" and that the Tenant, therefore, was not obligated to paint the walls at the end of the tenancy. Although there are scuffs and small gouges in the wall from the freezer, I find that these damages can be reasonably expected during a three year tenancy. In reaching this conclusion, I was heavily influenced by the Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years, which I find to be reasonable and by the Landlord's evidence that the rental unit was last painted four years ago and, therefore, is due to be repainted. On this basis, I find that the Landlord is not entitled to compensation for painting the rental unit.

I find that the Landlord has submitted insufficient evidence to cause me to conclude that the Tenant's failure to comply with the *Act* prevented the Landlord from finding a new tenant for April 01, 2010 and I therefore dismiss her application for compensation for loss of revenue for the period between April 01, 2010 and April 17, 2010.

In determining that the Landlord is not entitled to compensation for loss of revenue, I placed no weight on her evidence that she was unable to find new tenants during the month of March because the rental unit was messy and did not show well. I find that the Landlord has submitted insufficient evidence to show that the condition of the rental unit prevented her from finding new tenants during that month, as she submitted no

evidence to corroborate her claim that the unit was messy and there are numerous reasons why a person who has viewed the unit may not want to rent the unit.

In determining that the Landlord is not entitled to compensation for loss of revenue, I was heavily influenced by the photographs of the rental unit that were submitted in evidence. In my view the rental unit could have been made suitable for new tenants within forty-eight hours and I therefore cannot conclude that the condition of the rental unit at the end of the tenancy significantly contributed to the loss of revenue.

Section 7(2) of the *Act* stipulates that a party claiming compensation for damage or loss must do whatever is reasonable to minimize the loss. Although the Landlord stated that her work schedule prevented her from cleaning/ repairing the unit in a timely manner, I find that section 7(2) of the *Act* obligated her to complete this work in a timely manner, either by adjusting her personal schedule or by contracting the work to another party.

I find that the Landlord's application has some merit and I find that the Landlord is 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 \$298.80, which is comprised of \$76.80 for replacing the carpet; \$172.00 for cleaning the rental unit 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 this amount from the Tenant's security deposit of \$390.00.

I find that the Landlord is obligated to return the remainder of the Tenant's security deposit, in the amount of \$91.20, plus interest of \$10.44. The amount of interest is calculated from March 25, 2007, which is consistent with the Landlord's evidence that the deposit was paid several days prior to April 01, 2007 and the Tenant's evidence that it was paid approximately one week prior to April 01, 2007.

Based on these determinations I grant the Tenant a monetary Order for the amount \$101.64. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: September 16, 2010.

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Dispute Resolution Officer