



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, O

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for alleged damages to the rental unit and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

At the beginning of the 1st day of the hearing, the agent for the Tenant sought to adjourn the hearing as he claimed that he has just been retained to act for the Tenant. The Landlord objected to an adjournment. I find that the Tenant has had a reasonable amount of time to hire an agent after she received the Landlord's hearing package but delayed in doing so. Consequently, the Tenant's application for an adjournment was not allowed.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on September 8, 2007 and ended on March 3, 2010. Rent was \$1,400.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$700.00 on December 13, 2007 and a pet deposit of \$500.00 on September 13, 2008.

The Landlord claimed that the Tenant had rent arrears of \$200.00 for February 2010 and did not pay the final utility bills for the rental property at the end of the tenancy. The Tenant claimed that she was unsure if there were rent arrears. In particular, the Tenant claimed that she usually paid her rent in cash in one instalment but that in February 2010 she made more than one payment to the Landlord but did not receive receipts for them. The Tenant also argued that it was unclear what was owed (if anything) for utilities because the amounts claimed by the Landlord were based on a monthly equal instalment plan (based on estimated annual usage) rather than her actual usage.

The Landlord also claimed that the Tenant needed additional time to clean the rental unit at the end of the tenancy and did not return the keys to her until March 3, 2010 and as a result the Landlord sought 3 days of rent for over-holding. The Tenant claimed that everything but cleaning supplies were removed from the rental unit by March 1, 2010 and that she was unable to return to clean the unit until March 3, 2010 because the Landlord had changed the locks.

The Landlord also claimed that the Tenant left the rental unit unclean and damaged at the end of the tenancy. The Landlord did not prepare a move in or a move out condition inspection report but relied on copies of real estate listing photographs that she said were taken prior to her purchasing the property on August 15, 2007. The Landlord later admitted that she had purchased the property jointly with her mother in April of 2005 and had purchased her mother's interest in 2007. The Tenants argued that these photographs were not reliable because they could have been taken in 2005 and other Tenants resided in the rental property prior to the tenancy. The Landlord also relied on photographs she said she took of the rental property between March 1 and 18, 2010.

The Landlord withdrew her claim for a leaking kitchen sink and for a damaged strip on the kitchen counter but sought compensation for the following cleaning and repair expenses from the Tenant:

- **Drywall Repairs:** The Landlord claimed that there were gouges, BB holes and nail and tape marks on and in the dry wall throughout the tenancy.
- **Kitchen Cabinet Knobs:** The Landlord sought \$20.13 to replace knobs on drawers and cabinets which the Tenant did not dispute.
- **Custom Mini Blinds:** The Landlord sought \$167.23 to replace 3 custom mini blinds that she said were missing from the upstairs bedroom 2 of which the Tenant had replaced with bamboo blinds and one which remained but which was badly bent. The Tenant did not dispute that she was responsible for 2 of the missing blinds but denied that the third blind was damaged by her.
- **Window Screen clips:** The Landlord sought \$9.98 to replace 3 missing window screen clips. The Tenant claimed that these were missing at the beginning of the tenancy.
- **General Blinds:** The Landlord sought \$46.97 to replace 2 blinds for the downstairs front window. The Tenant denied that these blinds were in the rental unit at the beginning of the tenancy.

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- Broken door stops: The Landlord sought \$6.65 to replace broken door stops which the Tenant did not dispute.
- Glass in Kitchen Cupboard: The Landlord sought \$33.60 to replace broken glass in a kitchen cupboard which the Tenant did not dispute.
- Cleaning Supplies and services: The Landlord said the Tenant told her on March 5, 2010 that she had finished cleaning but when the Landlord arrived at the rental unit, it was not clean. Consequently, the Landlord said she spent \$44.44 on cleaning supplies and \$252.00 to hire a cleaning service. The Tenant claimed that the Landlord would not allow her back into the rental property after March 3, 2010 to complete cleaning.
- Replacement of damaged flooring: The Landlord said that the carpeting in the rental unit was damaged by the Tenant by way of stains that could not be removed and smelled of urine. The Landlord said she was advised by a professional carpet cleaner that the carpet was not salvageable so she replaced it with carpeting in the two back bedrooms and laminate in the rest of the carpeted areas. The Landlord said that she was only claiming 40% of the total cost to replace the carpet (or \$1,306.81) to account for the existing age and wear and tear of the old carpet. The Landlord claimed that at the end of the tenancy, the carpet in one bedroom was 6 years old and the rest of it was 8 years old.

The Tenant said that at the beginning of the tenancy there were stains in the carpet even though the Landlord had advised her that the carpets had just been cleaned. The Tenant said the Landlord also advised her at the beginning of the tenancy that the previous tenants had had a dog and that she was planning on removing the carpets after the tenancy when she would be moving in. The Tenant said she also offered to clean the carpets herself at the end of the tenancy but the Landlord said she wanted them professionally cleaned. The Tenant also argued that the mouldings did not have to be removed and damaged to remove the carpets.

- Water damage to the main bathroom: The Landlord claimed that the shower enclosure and tub leaked by a wall and that the water leaked into the laundry room below. The Landlord also claimed that the toilet and sink leaked. The Landlord claimed that although the leak was visible on the ceiling tiles in the laundry room, the Tenant did not say anything the leaks to her. The Landlord admitted that she was unsure if the Tenant was responsible for all of the water damage but argued that if the Tenant had said something she could have had a professional plumber make repairs. Consequently, the Landlord sought to recover repair expenses of \$1,439.81 from the Tenant.

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The Tenant said there were no proper seals around the shower enclosure and tub. Consequently when the tub started leaking, the Tenant said she advised the Landlord and as a result, the Landlord and her mother attended the rental unit and put silicon around the tub to seal the leaks. S.K. said that he also put another coat of silicon over the Landlord's and further up the wall where it appeared to have separated and around the drain area where there appeared to be no seal. The Tenant said there were no leaks after this repair was made. The Tenant also claimed that the toilet in this bathroom wobbled and was leaking into the laundry room. The Tenant said she advised the Landlord about this leak (which had stained the ceiling tiles) and the Landlord came to the rental unit and installed a new wax ring with the assistance of S.K. The Tenant said the toilet functioned properly after this repair. The Tenant denied that the sink leaked.

The Tenant argued that the Landlord never called professionals throughout the tenancy to do repairs but instead did them herself or left it up to the Tenant and S.K.

- Bathtub and sink faucets: The Landlord sought to recover the cost of replacing tub and sink faucets in the amount of \$206.93. The Landlord claimed that the Tenant stripped the threads on the faucets so that the handles would not stay on. The Tenant claimed that the knobs on the faucets came off early in the tenancy because they were already stripped.
- Bathroom Fixtures: The Landlord sought to recover the cost of a new vanity, toilet and tub in the total amount of \$1,209.20. The Landlord claimed that after the tenancy ended, the toilet fell through the sub-floor and cracked. The Landlord also claimed that the bathroom vanity had nail polish stains on it that could not be removed without scratching the Arborite. The Tenant admitted that one of her children may have left a small amount of nail polish on the counter but argued that it was unreasonable for the Landlord to replace the vanity for such a small stain. The Tenant claimed that there was nothing wrong with the bathtub and argued that the Landlord advised her at the beginning of the tenancy that it would have to go because she did not like the pink colour.
- Closet door repair: The Landlord sought to recover the cost of missing parts from closet doors in the amount of \$11.14. The Tenant claimed that parts fell out of the hinges during the tenancy due to the wear and tear on them over the years.
- Garbage disposal fee: The Landlord said that the Tenant left garbage in the shed and under the patio at the end of the tenancy and that she incurred transfer

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fees of \$43.00 to dispose of it. The Tenant admitted that she left a wall unit and patio table at the rental unit but argued that it would not have cost that much to dispose of these items. The Tenant said she also left yard waste to be picked up when scheduled for the following week by the municipal recycling program.

- **Replace downstairs toilet:** The Landlord claimed that the Tenant or S.K. took apart the toilet downstairs but failed to replace certain parts. The Landlord said that she was advised by a plumber after the tenancy ended that it was damaged by what appeared to be a “snake” used to remove a plug. Consequently the Landlord sought \$272.90 to replace the toilet. The Tenant denied that she or S.K. took the toilet apart.
- **Broken door frame:** The Landlord sought to recover \$12.30 to repair a broken door frame in the master bedroom which the Tenant did not dispute.
- **Missing trim:** The Landlord sought to recover \$10.55 for missing trim around the downstairs fireplace. The Tenant denied that the trim was missing and claimed that the nails had come out but it was still in the rental unit.
- **Repair to Baseboards:** The Landlord sought to recover \$28.00 for caulking holes in baseboards in the living room and bathroom downstairs which she alleged was from drilling holes to run cables. The Tenant denied cutting any holes to run cable lines and said that those holes were there at the beginning of the tenancy. The Tenant admitted to putting one hole in the wall downstairs for a telephone cable and S.K. said he caulked it to prevent moisture or mice from entering.
- **Water damage under Patio Window:** The Landlord sought to recover \$2,800.00 to replace the floor by the patio window in the dining room. The Landlord claimed that there was water damage to the drywall under the patio window that had separated the plywood in the subfloor and leaked into the drywall downstairs. The Landlord said a contractor advised her that the cause of the leak could have been from a fish tank or watering plants.

The Tenant said she had no knowledge of a water leak by the patio window although she claimed that it would have had to have been there for some time based on the Landlord’s photograph of the damaged subfloor. The Tenant said this area was the eating area and no one ever noticed the floor being wet. The Tenant suggested that the water may have come from condensation building up on the patio window (which was a single pane) over a long period of time.

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- **Photographs:** The Landlord sought to recover \$185.46 for the cost of photographs she provided as evidence at the hearing. The Tenant argued that the number of photographs (145 in total) was excessive.
- **Removal of cable:** The Landlord sought to recover \$262.50 to remove cable that she said had been drilled into the structure of the rental unit and into the living room without her consent and to fill the remaining holes. The Tenant claimed that the holes were put there by a previous occupant of the rental property who had installed a satellite dish and not by her or S.K. (as they did not have a satellite dish).
- **Yard Cleaning Expenses:** The Landlord sought to recover \$1,700.00 to remove gravel from the back yard which the Tenant had used as a base for a pool. The Landlord also claimed that the Tenant cut down 3 healthy cedar trees without her approval and left large stumps and branches. Consequently, the Landlord said she received a verbal quote that it would cost \$1,700.00 to remove the debris, gravel and stumps.

The Tenant claimed that the 3 trees blew over in a wind storm and that a by-law officer saw them and ordered the Landlord to remove them. The Tenant said the Landlord couldn't afford to hire someone so she asked S.K. to do it. The Tenant admitted that she did not remove all of the gravel but argued that it would only take ½ of an hour to remove it using a wheel barrow.

- **Back Door:** The Landlord sought to recover \$1,200.00 for a back door that she claimed the Tenant's dog scratched and dented. The Tenant claimed that the only damage to this door was scratches on one of the glass panes which could be replaced for \$50.00.
- **Screen Door:** The Landlord sought to recover \$85.11 to replace a screen door she said was irreparably damaged by the Tenant. The Landlord admitted that there was a small tear in the screen at the beginning of the tenancy, but claimed it was completely ripped out at the end of the tenancy.

The Tenant admitted that one of her infant children walked into the screen at the beginning of the tenancy tearing it further but claimed that thereafter, the screen door was permanently left open so that it was no longer used. Consequently, the Tenant argued that there was nothing structurally wrong with the door and that only the screen needed to be replaced.

- **Broken gutter on shed:** The Landlord claimed that the Tenant broke a piece of the gutter on the shed. The Landlord said she was advised by a contractor that

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because it was a continuous gutter, all of the gutters on it would have to be replaced at a cost of \$650.00.

The Tenant admitted that she was responsible for damaging the gutter on the shed but argued that it was unreasonable that all of the gutters would have to be replaced especially considering that the damaged area was a soffit which could easily be replaced.

- Oven Door Handle: The Landlord claimed that the Tenant was responsible for breaking a handle on the oven door and estimated that it would cost \$100.00 to repair it. The Tenant admitted that the handle came off a few days before the tenancy ended and suggested that it could have been due to wear and tear.
- Downstairs Door: The Landlord sought to recover \$250.00 for a downstairs door that she said the Tenant damaged. The Tenant admitted that she was responsible for putting a hole in the door but argued that the amount sought by the Landlord was excessive given that it was an ordinary interior door which would be approximately \$75.00.
- Downstairs Closet Door: The Landlord sought to recover \$150.00 for a downstairs closet door that she claimed the Tenant damaged.

Analysis

I find that there is insufficient evidence that the Tenant had rent arrears for February 2010. In particular, the Landlord provided no evidence such as rent receipts for cash payments as the Act requires her to do and provided no other documentary evidence of the Tenant's rent history. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

Section 57(3) of the Act says that a Landlord may claim compensation from an over-holding tenant for any period that the tenant **occupies** the rental unit after the tenancy is ended. The Tenant said the Landlord changed the locks on March 1, 2010 after all of her belongings were removed. The Landlord said she gave the Tenant a new key and she did not return this key until March 3, 2010. The Tenant said she tried to use this key on March 2, 2010 but it did not work and she had to let the Landlord let her into the rental unit to do cleaning up until March 3, 2010. I find that there is insufficient evidence that the Tenant was over-holding. In particular, I find that the Tenant ceased to occupy the rental unit by March 1, 2010 and I further find that the Landlord acknowledged this by her act of changing the locks on the rental unit that day. I further find that the Landlord voluntarily agreed to let the Tenant back into the rental unit

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thereafter but only for the purpose of cleaning it. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Landlord claimed that at the end of the tenancy, the Tenant had BC Hydro arrears of \$285.06 and Terasen Gas arrears of \$302.15. Although the Landlord attempted to provide a calculation showing how she arrived at the amounts she claimed to be owed, they were unhelpful. The Landlord also relied in error on a BC Hydro statement from February 2009 instead of 2010 and on a Terasen Gas statement from March 2009 instead of 2010. The final bills provided by the Landlord show only the previous unpaid amount and actual charges for the last month. And although The Tenant argued that she was only responsible for the actual billing amounts and not for the equal instalment amounts, I find that this is also not an appropriate approach. Both utility bills show that the unpaid balances carried over are based only on the unpaid instalment amount and not on the unpaid usage amount (which is generally higher in winter months).

Consequently, I find on a balance of probabilities that the Tenant is responsible for unpaid Hydro of **\$175.83** (previous billing amount of \$149.05 + \$1.03 late fee + \$25.75 usage from Feb. 18 to March 1, 2010). I also find that the Tenant is responsible for unpaid gas of **\$350.94** (previous billing amount of \$224.86 + 1.75 late fee + \$124.33 usage from Feb. 16 to March 1, 2010)

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines reasonable wear and tear as "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. 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 matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that due to an act or neglect of the Tenant (instead of reasonable wear and tear), the rental unit sustained damages. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. 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.

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The Landlord relied on photographs of a real estate listing as evidence of the condition of the rental unit in June 2007 just prior to the tenancy. The Tenant disputed the reliability of those photographs and claimed that they could have been taken in 2005 when the Landlord and her mother purchased the property and argued that there was an intervening tenancy. The listing information does not indicate a date and as a result, I find that there is insufficient evidence to conclude that the photographs represent the condition of the rental unit at the beginning of the tenancy. Consequently, I give them little weight.

The Landlord also relied on photographs of the rental unit that she said she took at the end of the tenancy. However, as the Landlord provided no reliable evidence of the condition of the rental unit at the beginning of the tenancy, I find that the usefulness of these photographs is limited. In other words, if there is no evidence of the condition of the rental unit at the beginning of the tenancy, then it is difficult to show that the condition at the end of the tenancy was worse. Furthermore, the Landlord admitted that some of her photographs were taken 2 weeks after the tenancy ended which makes them potentially unreliable especially where they are disputed by the Tenant. Consequently, in the absence of admissions from the Tenant as to her responsibility for certain damages, these photographs are also of limited usefulness to show that the Tenant was responsible for the condition of the rental unit at the end of the tenancy.

The Tenant agreed to reimburse the Landlord for the following items:

Kitchen Cabinet knobs **(\$20.13)**
Door Stops **(\$6.65)**
Glass for a kitchen cupboard **(\$33.60)**
Door Frame **(\$12.30)**

The Tenant admitted to being responsible for the following other items but argued that the compensation claimed by the Landlord was unreasonable:

- Custom Mini Blinds: The Tenant admitted responsibility for 2 missing blinds but claimed a third was in reasonable shape at the end of the tenancy. Given that there is no reliable evidence of the condition of the blind at the beginning of the tenancy and no evidence of its condition on March 1, 2010 when the tenancy ended, I find that she is entitled to compensation for 2 blinds in the amount of **\$111.49**.
- Garbage disposal fee: Based on the photographs of the rental property at the end of the tenancy (that the Tenant did not dispute), I find that there was significantly more garbage that had to be removed from under the patio and shed

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area than just a patio table and wall unit. Consequently, I find that the Landlord is entitled to recover **\$43.00** to dispose of these items.

- **Yard Cleaning Expenses:** Given the contradictory evidence of the Parties regarding the removal of 3 trees, I find that there is insufficient evidence to conclude that the Tenant did not have the Landlord's approval to cut them down. However, the Tenant admitted to leaving some gravel behind and as a result, I find that the Landlord is entitled to **\$75.00** for this expense.
- **Screen Door:** The Tenant admitted that one of her children ran into the screen door and further damaged it but argued that it already had a tear in it. In the circumstances, I find that the Landlord is not entitled to recover the cost of a new door and instead I award her **\$25.00** for the reduced value of the already damaged door.
- **Back Door:** In the absence of any evidence from the Landlord as to the condition of this door at the beginning of the tenancy, I find based on the Tenant's evidence that she is responsible only for the scratches to one of the glass panes in the door. In the circumstances, I find that it would be unreasonable to replace the whole door and for this reason, I award the Landlord **\$50.00** for the reduced value of the door due to the scratches on the glass.
- **Broken gutter on shed:** The Tenant admitted she was responsible for breaking a piece of the gutter on the shed but disputed the Landlord's claim that it would cost \$650.00 to repair it. The evidence provided by the Landlord in support of this claim (a verbal estimate) is hearsay and therefore unreliable. Consequently, in the absence of any reliable evidence, I award the Landlord **\$50.00** representing the cost to replace the soffit area only that was damaged rather than the entire gutter on the shed.
- **Oven Door Handle:** I find that there is insufficient evidence to conclude that the oven door handle broke as a result of an act or neglect of the Tenant as opposed to reasonable wear and tear and as a result, this part of the Landlord's claim is dismissed without leave to reapply.
- **Downstairs Door:** The Tenant admitted to damaging an interior door but argued that the amount sought by the Landlord was excessive. I also find that the amount sought by the Landlord is unreasonable to replace an older, interior door and instead I award her **\$100.00**.

The Tenant disputed that she was responsible for the following damages alleged by the Landlord:

- **Window Screen clips:** Given the contradictory evidence of the Parties regarding the existence of window screen clips at the beginning of the tenancy and in the absence of any further evidence to resolve the contradiction, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim and it is dismissed without leave to reapply.
- **Drywall Repairs:** The Landlord claimed that there were gouges and BB pellet holes in the drywall throughout the rental unit as well as sections of the walls that had to be repaired from nail holes or pictures stuck onto the wall. I find on a balance of probabilities that much of this damage was caused by the Tenant. Although the Tenant argued that some of these damages were reasonable wear and tear for a family with 4 children, I disagree. However, the repair invoice provided by the Landlord shows that the amount she has claimed also includes repairs to sections of water-damaged drywall and to repair holes drilled for cables. Consequently, I award the Landlord **\$200.00** (of the \$525.00 claimed) to repair the holes and gouges in the drywall.
- **General Blinds:** Given the contradictory evidence of the Parties regarding the existence of 2 blinds in the downstairs front window at the beginning of the tenancy and in the absence of any further evidence to resolve the contradiction, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim and it is dismissed without leave to reapply.
- **Water damage under Patio Window:** The Tenant denied being aware of a water leak or any water damage to the dining room floor area by the patio window. The photographs taken by the Landlord of the dining room area after the tenancy ended, however show stains on the carpet in or about that area. The Tenant claimed, however that there were stains in the carpet at the beginning of the tenancy and suggested that any damage to the subfloor and drywall could have been caused by condensation from the window. Although the Landlord relied on hearsay evidence of a contractor regarding the cause of the water damage, this evidence is unreliable and I give it no weight. Consequently, given the contradictory evidence of the Parties on this point and in the absence of any reliable evidence to resolve the contradiction, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim and it is dismissed without leave to reapply.

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- Replacement of damaged flooring: The Parties gave contradictory evidence of the condition of the carpets at the beginning of the tenancy and whether some soiling caused by the Tenant could have been removed by carpet cleaning. The Landlord provided hearsay evidence from a professional carpet cleaner that the stains could not be removed. The Tenant said she did not have an opportunity to find out which stains the Landlord alleged would not come out. Given these contradictions and in the absence of any further, reliable evidence to resolve the contradiction, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim (which includes mouldings) and it is dismissed without leave to reapply.
- Water damage to the main bathroom: The Landlord admitted that she was unsure of any water damage to the bathroom area that may have occurred prior to the tenancy but claimed signs of water leaking downstairs would have been obvious to the Tenant and she failed to report it to the Landlord. The Tenant said she did report leaks in the shower and a toilet to the Landlord who with the assistance of S.K. made the required repairs. In the circumstances, I find that there is insufficient evidence to conclude that the water damage occurred due to an act or neglect of the Tenant as opposed to the Landlord's failure to repair and maintain and as a result, this part of the Landlord's claim (which includes plumbing parts and drywall and floor repairs) is dismissed without leave to reapply.
- Bathtub and sink faucets: I find that there is insufficient evidence to conclude that these faucets were stripped as a result of an act or neglect of the Tenant as opposed to reasonable wear and tear and as a result, this part of the Landlord's claim is dismissed without leave to reapply.
- Bathroom Fixtures: Similarly, I find that there is insufficient evidence to conclude that an old toilet and bathtub were damaged by an act or neglect of the Tenant as opposed to reasonable wear and tear. However, the Tenant admitted that one of her children may have put nail polish on the counter top of the vanity but argued that it was unreasonable to replace the whole vanity as a result. I also find that it is unreasonable to award the Landlord \$450.00 for a new vanity due to 2 nail polish marks which are approximately an inch to an inch and ½ in length. Consequently, I award the Landlord **\$25.00** for the diminished value of the vanity due to the nail polish marks.
- Replace downstairs toilet: I also find that there is insufficient evidence to conclude that the downstairs toilet was damaged by an act or neglect of the Tenant as opposed to reasonable wear and tear. Although the Landlord claimed that she was advised by a plumber that it appeared someone had attempted to

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repair the toilet, I find that this is unreliable, hearsay evidence and I give it no weight. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

- Closet door repair: I find that there is insufficient evidence to conclude that the closet door repair was due to an act or neglect of the Tenant as opposed to reasonable wear and tear and as a result, this part of the Landlord's claim is dismissed without leave to reapply.
- Missing trim: Given the contradictory evidence of the Parties on this point, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim and it is dismissed without leave to reapply.
- Downstairs Closet Door: In the absence of any evidence from the Landlord regarding the condition of the closet door at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the Tenant was responsible for damaging it and that part of her claim is dismissed without leave to reapply.
- Removal of cable and Repair to Baseboards: Given the contradictory evidence of the Parties on this point, I find that the Landlord has not met the evidentiary burden on her to show that the Tenant is responsible for this part of her claim and it is dismissed without leave to reapply. Although the Tenant admitted to drilling one hole for a telephone line, I accept his evidence that this hole was filled to prevent moisture from coming into the house.
- Cleaning Supplies and services: The Tenant admitted that she began cleaning the rental unit on March 1, 2010 and returned on March 3, 2010 but did not return thereafter. The Tenant argued that the Landlord prevented her from returning to do the cleaning. However, as indicated above, the tenancy had ended as of March 1, 2010 and therefore the rental unit should have been cleaned as of that date. The Landlord was under no obligation after February 28, 2010 to allow the Tenant back onto the rental property to continue cleaning. Consequently, I find that the Landlord is entitled to her cleaning expenses of **\$296.44**.
- Photographs: I find that the Landlord's claim for photographs is unreasonable. In particular, I find that many of the photographs would likely have been unnecessary had the Landlord complied with her responsibility under the Act to prepare a move in and a move out condition inspection report. Had she done so, photographs would only have been necessary if the Tenants refused to acknowledge the condition at the end of the tenancy. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

In summary, I find that the Landlord has made out a monetary claim for **\$1,500.38**. As the Landlord has only been successful in recovering less than one ½ of her claim, I find that she is only entitled to recover ½ of the filing fee for this proceeding or \$50.00.

The Tenant argued that because the Landlord did not return the security deposit and pet damage deposit within 15 days of the end of the tenancy, the Landlord was liable to pay double the amount of the deposits. However, a Landlord's obligation to return a security deposit or pet damage deposit only arises on the **later** of the date the tenancy ends or the date the Tenant gives her forwarding address in writing. I find that the Tenant did not give the Landlord her forwarding address in writing and as a result, the Landlord is not liable to return double the security deposit and pet damage deposit.

The Tenant also argued that the Landlord's right to keep the security deposit and pet damage deposit for damages to the rental unit was extinguished under s. 25 and s. 36 of the Act because she did not complete a move in or a move out condition inspection report. However, I find 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 and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the Tenant's security deposit and pet damage deposit plus accrued interest to partially compensate her for the monetary award. The Landlord will receive a monetary order for the balance owing as follows:

Monetary award:	\$1,500.38
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,550.38
Less: Security deposit:	(\$700.00)
Accrued interest:	(\$11.05)
Pet deposit:	(\$500.00)
Accrued interest:	<u>(\$0.00)</u>
Balance owing:	\$339.33

Conclusion

A Monetary Order in the amount of **\$339.33** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.



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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: October 06, 2010.

Dispute Resolution Officer