



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MND, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on July 6, 2010, the tenant did not attend the conference call hearing. An agent attended for the landlord company, as well as a witness, the resident manager of the rental complex. Both gentlemen gave affirmed testimony, and provided evidence in advance of the hearing.

All information and testimony provided has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This fixed term tenancy began on December 1, 2009 and was to expire on November 30, 2010. Rent in the amount of \$790.00 per month was payable in advance on the 1<sup>st</sup> day of each month, in addition to \$15.00 per month for parking fees. On November 13, 2009, the landlord collected a security deposit from the tenant in the amount of \$395.00.

The landlord's agent testified that the tenant gave notice to the landlord dated January 31, 2010 that he would be vacating the unit by February 28, 2010, but the note was not received by the landlord until February 3, 2010, at which time the tenant attended the landlord's office and personally gave it to an employee. The tenant gave another letter dated February 11, 2010 stating he was leaving on February 13, 2010, which was dropped off at the landlord's office on February 15, 2010. The tenant vacated the rental unit on February 13, 2010. The landlord's agents state that the tenant abandoned the unit by leaving before the latest letter was received by the landlord. The landlord's agent completed the move-out condition inspection report on February 13, 2010 without the tenant present. The move-out condition inspection report states that the tenant left keys and a letter inside the hallway on the floor and left no forwarding address.

The landlord's agent testified that the tenancy agreement, a copy of which was provided in advance of the hearing, provided for liquidated damages in the amount of \$300.00 if the tenant failed to rent the unit for the entire fixed term. Further, the tenant did not pay rent for the month of February. The landlord is claiming \$805.00 for rent and parking, as well as a \$25.00 late fee, which the agent testified is contained in the tenancy agreement for each rental payment not made by the 1<sup>st</sup> day of the month.

The unit was re-rented by the landlord on March 1, 2010.

The landlord's agent further testified that the drapes required cleaning, as well as the carpets. When questioned about the condition of those items, the resident manager became very belligerent and stated that he always cleans carpets and drapes and the tenant is responsible. He further stated that the hearings conducted by way of conference call have made disputes more difficult to resolve, although provided no

evidence or submission to support that claim. The landlord is claiming \$84.00 for carpet cleaning, \$40.00 for drapery cleaning and \$146.00 for cleaning the rental unit. He also stated that the tenant smoked inside the unit and did not vacuum the carpets. Further, the tenant left stains on the carpet in the living room which required the landlord to clean them in this case. The landlord provided receipts to substantiate the claims.

### **Analysis**

The *Residential Tenancy Act* is clear with respect to the responsibility of the tenant upon vacating a rental unit:

- 37** (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Therefore, in order to be successful in a claim for damages, the onus is on the landlord to prove that the tenant left the unit in a state of cleanliness or damage beyond reasonable wear and tear. Cleaning carpets and drapes is not necessarily the responsibility of the tenant, especially if the tenant resides in the unit for less than one year. I find that the tenant remained in the unit for less than 3 months. The landlord may want the unit to be in a pristine condition to re-rent or to show to perspective tenants, but that is only the responsibility of the tenant if the landlord can prove that the tenant did not comply with Section 37.

I also refer the landlord's agents to the Residential Tenancy Policy Guidelines that can be found on the Residential Tenancy Branch website. The landlord testified that the tenant smoked in the unit, and I find that smoking in the unit constitutes an onus on the tenant to clean drapes and carpets. I also accept the evidence of the landlord's agent that stains were left on the carpet by the tenant, which is beyond normal wear and tear.

I have also reviewed the tenancy agreement provided by the landlord and find that the tenant is also responsible for liquidated damages in the amount of \$300.00 as set out in that document. I find that the liquidated damages clause is not a penalty, but to cover the administration costs in re-renting the rental unit.

The *Residential Tenancy Act* specifies that notice given by a tenant must be given the day before the day in the rental period that rent is payable under the tenancy agreement, must be effective not earlier than one month after the landlord receives that notice, and must not be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. I accept the evidence of the landlord that the tenant did not provide sufficient notice to end the tenancy, and did not pay rent for the month of February, 2010. Therefore, the landlord is entitled to a monetary order for rental arrears in the amount of \$790.00, parking in the amount of \$15.00 and \$20.00 for a late charge as provided for in the tenancy agreement, not \$25.00 as claimed by the landlord's agent.

With respect to the move-out condition inspection report, I find it difficult to understand why the landlord's agent would complete the report without the tenant prior to receiving the second letter from the tenant. The *Residential Tenancy Act* also provides that the landlord is required to provide the tenant with 2 opportunities to conduct the move-out condition inspection unless the tenant has abandoned the rental unit. I accept the information provided on the move-out condition inspection report, and not the verbal testimony of the landlord's agent. I further find that the tenant abandoned the unit on February 13, 2010.

With respect to cleaning the unit, I find that the landlord has only partially proven the claim. The landlord provided 3 invoices for cleaning the unit, being 3 hours for the bathroom; 3 hours for the fridge, stove, under and behind, and cupboards; 3 hours for cleaning the balcony, windows, tracks and to vacuum the total suite. Each hour is claimed at \$14.00 in addition to \$20.00 to replenish cleaning stock. I find that the landlord has failed to establish that the fridge and stove were pulled out at the time the

move-in condition inspection report was completed and has therefore failed to prove that the tenant left those areas in any different condition than when he moved in.

### **Conclusion**

For the reasons set out above, I hereby order that the landlord recover from the tenant the sum of \$790.00 for unpaid rent, \$15.00 for unpaid parking, \$20.00 rental late fee, \$300.00 in liquidated damages, \$40.00 for drapery cleaning, \$104.00 for cleaning the rental unit, and \$84.00 for cleaning the carpets, for a total of \$1,353.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest in the amount of \$395.00 and I grant the landlord a monetary order for the balance of \$1,008.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 26, 2010.

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Dispute Resolution Officer