



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent and utilities, for compensation for cleaning and repairs, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served one of the Tenants (W.W.) in person with 2 copies of the Application and Notice of Hearing (the "hearing package") on or about July 12, 2010 and she confirmed that she would also accept service of it for the other Tenant (S.W.). The Landlord said he also served the Tenants on July 13, 2010 with a copy of the hearing package by registered mail to the forwarding address given to him by the Tenants and they received it on July 14, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Are there rent and utility arrears and if so how much?
2. Are the Landlords entitled to compensation for cleaning and repairs and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and if so, how much?

### Background and Evidence

This tenancy started on October 24, 2007 and ended on May 14, 2010 when the Tenants moved out. Rent was \$1,350.00 per month payable in advance on the 1<sup>st</sup> day of each month plus 70% of the utilities for the rental property. The Landlord (S.F.) said that the Tenants were responsible for 100% of the utilities when no one was residing in the other rental unit in the rental property. The Tenants paid a security deposit of \$675.00 some time prior to April, 2007 when the current Landlords took over the rental property in which the Tenants were then residing. The Tenants paid an additional security deposit of \$200.00 at the beginning of this tenancy.

The Landlord said the Tenants executed a Promissory Note on December 5, 2009 acknowledging rent and utility arrears (to and including that month) in the amount of \$7,509.09. The Landlord also said the Tenants also agreed to pay late fees of \$150.00

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per month for so long as those arrears remained unpaid. Consequently, the Landlord sought to recover that amount, plus late fees and unpaid rent and utilities for April and May 2010.

The Landlord said the rental unit was newly renovated at the beginning of the tenancy and the Tenants signed their acknowledgement on the tenancy agreement that this was the case. The Landlord also said that the Tenants completed a move in condition inspection report that shows there were only a few minor condition issues at the beginning of the tenancy. The Landlord provided copies of photographs of the rental unit that he said he took the day prior to the start of the tenancy. The Landlord said that when the Tenants moved out on May 14, 2010 they said they would return to do cleaning and return the keys but they never did so. The Landlord said this was why he did not do a move out condition inspection report and instead he provided copies of photographs that he said were taken at the end of the tenancy.

The Landlord said the Tenants did not clean the rental unit and he incurred expenses of \$240.00 (for labour) plus supplies to do general cleaning. The Landlord also said that some of the walls had holes and the bedroom walls were heavily soiled and therefore had to be repainted at a cost (for labour) of \$300.00 plus supplies. The Landlord further claimed that the oven in the rental unit was so dirty from baked on food and debris that it had to be thrown out and he purchased a used one to replace it at a cost of \$150.00. Similarly the Landlord claimed that the Tenant damaged a new washer and dryer so that they were inoperable and as a result, he also had to replace them with a used pair at a cost of \$400.00. The Landlord also said that the carpet in the rental unit was only one year old and in good condition at the beginning of the tenancy but at the end of the tenancy, the carpeting in the bedrooms, hallway and stairwell was damaged, soiled and smelled strongly and had silverfish underneath it. Consequently, the Landlord said the carpeting had to be removed and replaced at a cost to him of \$4,464.00 for the carpeting and \$784.00 for installation. However, on his application, the Landlord limited his claim for damages to \$3,000.00.

## Analysis

Given that the Landlords have already obtained a Promissory Note from the Tenants for rent and utility arrears preceding 2010, I find that it is unnecessary to add that amount to the amount claimed for April and May 2010. Consequently, the Landlords' claim for unpaid rent and utilities for the period preceding 2010 is dismissed with leave to reapply. In the absence of any evidence from the Tenants to the contrary, I find that rent is unpaid for April and May 2010 in the amount of \$2,700.00 as well as utilities (for gas and electricity) in the total amount \$394.24 (which includes a pro-rated amount of \$40.08 for gas for the period, April 26 –May 14, 2010).

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The Landlords also sought to recover late payment fees of \$150.00 per month pursuant to a term of the Parties' tenancy agreement that provides for late fees of \$5.00 per day. However, s. 7(1)(d) of the Regulations to the Act says that a Landlord may only charge a maximum of \$25.00 for the late payment of rent provided that there is a term in the tenancy agreement to that effect. Consequently, I find that the Landlords cannot recover the late payment fees of \$150.00 per month and that part of their claim is dismissed without leave to reapply.

Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Based on the evidence of the Landlords, I find that the rental unit was not reasonably clean at the end of the tenancy and that the damages for which the Landlords seek compensation were not the result of reasonable wear and tear. In particular, I find that the carpet was only one year old at the beginning of the tenancy and had an expected lifetime of 10 years (see RTB Policy Guideline #37). Similarly, I find that the washer, dryer and stove were relatively new at the beginning of the tenancy and each had an expected lifetime of 15 years. Because these items were damaged beyond repair at the end of the tenancy and had to be replaced well before their expected life times, I conclude that the damage was caused by an act or neglect of the Tenants rather than reasonable wear and tear. Although the total expenses for the cleaning and repairs exceeded \$3,000.00, the Landlords limited their claim to \$3,000.00 and as a result, I find that they are entitled to recover that amount.

I find pursuant to s. 72 of the Act that the Landlords are also entitled to recover the \$100.00 filing fee for this proceeding from the Tenants. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit and accrued interest in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing as follows:

Unpaid Rent:	\$2,700.00
Unpaid Utilities:	\$394.24
Cleaning & Repairs:	\$3,000.00
Filing fee:	<u>\$100.00</u>
Subtotal:	\$6,194.24
Less: Security deposit:	(\$875.00)
Accrued interest:	<u>(\$21.38)</u>
Balance owing:	\$5,297.86



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## Conclusion

A Monetary Order in the amount of **\$5,297.86** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: November 24, 2010.

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Dispute Resolution Officer