



# 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, for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address on July 4, 2010 but it was returned to them unclaimed. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refused to pick up the mail). Based on the evidence of the Landlords I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

The Landlords amended their application on August 27<sup>th</sup> to include an additional monetary claim of \$7,300.00. However, the Landlords said that the Tenant would not provide them with a forwarding address and they could not serve her at her place of work or a charitable association where she was known to be a member. Consequently, the Landlords said they were advised of the Tenant's new address by Telus on November 7, 2010 and served the Tenant by registered mail with their amended application and evidence package that day. Based on the evidence of the Landlords, I find pursuant to s. 71 of the Act that the Tenant was sufficiently served with the amended application.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
3. Are the Landlords entitled to compensation for cleaning and repair expenses and if so, how much?
4. Are the Landlords entitled to keep the Tenant's security deposit.



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## Background and Evidence

This tenancy started approximately 8 years ago and ended on or about July 31, 2010 pursuant to an Order of Possession granted to the Landlords on June 23, 2010. Rent was \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The Landlords said that in previous proceedings held on June 23, 2010, the Tenant agreed to pay rent for June 2010 on June 24, 2010 and to give the Landlords a post dated cheque for July rent, however she failed to do so and rent for those months remains unpaid.

The Landlords said they purchased the rental property in May 2010 and that a move in condition inspection report was not completed (and it was not required under the Act in 2002). The Landlords said they arrived at the rental unit on July 31, 2010 to find that the Tenant had moved out all of her large furnishings and had abandoned a large number of other furnishings and possession on the rental property. The Landlords also said that at that time they discovered that the Tenant had changed the locks without their consent. The Landlords did not complete a move out condition inspection report but instead took photographs of the rental unit as evidence of its condition at the end of the tenancy.

The Landlords said it took 6 persons 15 hours and a further 2 people 7 hours to remove garbage and articles from the rental unit and clean it. The Landlords said it also took 2 people 5 hours to remove damaged or soiled carpeting and underlay. Consequently, the Landlords sought a total of \$2,320.00 to remove the Tenant's abandoned articles and garbage from the rental unit and to clean (ie. 116 hours @ \$20.00 per hour). The Landlords also sought to recover \$1,211.26 which was the cost of 2 commercial garbage bins that were used to remove the many articles left behind by the Tenant plus disposal fees.

The Landlords said that the carpeting and underlay in the rental unit was damaged beyond repair and had to be replaced at a cost of \$2,300.00. The Landlords said they were unsure of the age of the carpeting. The Landlords also claimed that the Tenant damaged a dishwasher, stove, refrigerator and hood fan and they sought to recover \$250.00 which was the cost to replace them with used ones.

The Landlords also said that it took almost a month to clean and repair the rental unit before it could be re-rented and as a result, the Landlords sought to recover a loss of rental income for the month of August 2010. The Landlords also sought to recover the cost to change the locks on the rental unit.

## Analysis

In the absence of any evidence from the Tenant to the contrary, I find that the Tenant did not pay rent for June and July 2010 and as a result I find that the Landlords are entitled to recover \$2,400.00 for this part of their claim.

Section 32 of the Act says that a Tenant is responsible for damages caused by her act or neglect but is not responsible 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.”

Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant within 15 days. If a Landlord does not do so, s. 36(2)(c) of the Act says that the Landlord’s right to claim against the security deposit for damages to the rental unit is extinguished. A Landlord may still make a claim for compensation for damages but may not use the security deposit to offset those types of damages (but may use it to offset other damages such as unpaid rent or a loss of rental income).

A condition inspection report is intended to serve as conclusive 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 the absence of a condition inspection report, other evidence (such as photographs) may be adduced but is unlikely to carry the same evidentiary weight especially if it is disputed. In this case, the photographs taken by the Landlords at the end of the tenancy show that the Tenant abandoned a large number of articles in the rental unit and did not leave it reasonably clean. Consequently, I find that the Landlords are entitled to \$2,120.00 for the cost of labour to remove those articles and to clean. I also find that the Landlords are entitled to recover the cost two garbage bins and disposal fees of \$1,211.26.

I find that some of the damage to the carpets in the rental unit (ie. from pet urine, feces and ground in dirt) was not the result of reasonable wear and tear and as a result, the Tenant must bear responsibility for part of the cost to replace the carpet. However, RTB Policy Guideline #37 at p. 16 states that assuming reasonable wear and tear, a carpet has an expected lifetime of 10 years. In the absence of any reliable evidence as to the age of the carpets at the end of the tenancy, I conclude that they were probably as old as the tenancy itself and therefore I find that they were 8 years old. Consequently, I find that the Landlords are only entitled to recover 20% of the replacement cost of the carpet or \$460.00, as well as \$200.00 representing the cost of labour to remove the damaged carpeting.

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Similarly, RTB Policy Guideline #37 at p. 17 says that assuming reasonable wear and tear, a refrigerator and stove have an expected lifetime of 15 years while a dishwasher has an expected lifetime of 10 years. The Landlords estimated that the refrigerator and stove were approximately 12 years of age and the dishwasher approximately 5 years old at the end of the tenancy. However, I find that the Landlords have more than mitigated this expense by replacing the damaged appliances with inexpensive, used ones and as a result, I award the Landlords \$250.00 for this part of their claim.

I also find that a large amount of cleaning and repairs to the rental unit were required at the end of the tenancy and as a result it could not be re-rented for August 2010. Consequently, I find that the Landlords are entitled to recover \$1,200.00 for lost rental income for August 2010. I further find that the Tenant breached s. 31(2) of the Act by changing the locks on the rental unit without the Landlords' consent and as a result, I find that they are entitled to recover \$196.00 representing the cost of replacing them.

As the Landlords have been successful in this matter, I find that they are entitled to recover the \$100.00 filing fee for this proceeding as well as \$20.75 for the cost of photographs. I order the Landlords pursuant to s. 38(4) and 72 of the Act to keep the Tenant's security deposit and accrued interest in partial payment of the damage award. The Landlords will receive a Monetary Order for the balance owing as follows:

Unpaid rent June 2010:	\$1,200.00
Unpaid rent July 2010:	\$1,200.00
Loss rental income August 2010:	\$1,200.00
Cleaning – labour expense:	\$2,120.00
Cleaning – disposal expense:	\$1,211.26
Carpet – material expense:	\$460.00
Carpet removal expense:	\$200.00
Appliances:	\$250.00
Lock replacement:	\$196.00
Photograph expenses:	\$20.75
Filing fee:	<u>\$100.00</u>
Subtotal:	\$8,158.01
Less: Security deposit:	(\$600.00)
Accrued interest:	<u>(\$21.25)</u>
Balance owing:	\$7,536.76



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## Conclusion

A Monetary Order in the amount of **\$7,536.76** has been issued to the Landlords 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.

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 17, 2010.

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Dispute Resolution Officer