



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MND, MNDC, MNR, MNSD, FF, SS

### **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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent and utilities; a monetary Order for money owed; to keep all or part of the security deposit; for a substitute service Order; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for a substitute service Order

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the rental unit, on July 21, 2010. She cited a Canada Post tracking number which corroborates this statement. She stated that she checked the Canada Post website, which reportedly indicates that the mail was picked up by the Tenant on August 07, 2010, at which time her signature was electronically recorded. On the basis of this information, I find that these documents have been sufficiently served, pursuant to section 71(2)(c) of the *Act*, however the Tenant did not appear at the hearing.

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

The issues to be decided are whether the Landlord is entitled to a monetary Order for money owed or compensation for damage or loss; a monetary Order for damages to the rental unit; a monetary Order for loss of revenue: to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

### **Background and Evidence**

The Landlord submitted a copy of a tenancy agreement that indicates this tenancy began on April 30, 2010; that the Tenant was required to pay \$1,200.00 in rent on the first day of each month; that the Tenant was required to pay 2/3 of the hydro bill; and that the Tenant paid a security deposit of \$600.00. The Landlord stated that the Tenant actually moved into the rental unit on August 01, 2009, and that they entered into a new tenancy agreement after the tenancy had begun. She stated that the tenancy ended on

May 30, 2010. She stated that the Tenant has never provided her with a forwarding address.

The Landlord submitted a copy of two addendums to the tenancy agreement. One of the addendums, which is signed by the Tenant, indicates that the yard work is to be shared with other tenants. The Landlord stated that this addendum related to the period prior to April 30, 2010. The second addendum, which is also signed by the Tenant, indicates that the yard work is to be shared with other tenants and that if it is not done the landlord will hire professionals and charge the tenants for the cost of maintaining the yard. The Landlord stated that this addendum related to the period after April 30, 2010.

The Landlord stated that the yard was not well maintained and that the grass in the back yard was extremely long. She stated that she hired a landscaper to weed the gardens and mow the back yard, for which she paid \$879.50. She stated that the verbal agreement was that this Tenant would tend the front yard and that she and the other occupant of the residential complex would jointly mow the lawn in the back yard. The Landlord is seeking to recover the full cost of landscaping the front yard, which is \$528.00, and fifty percent of landscaping the back yard, which was \$175.75.

The addendums to the tenancy agreement both declare that the Tenant must have the carpets professionally cleaned at the end of the tenancy. The Landlord stated that the carpets were not professionally cleaned at the end of the tenancy. The Landlord submitted a receipt to show that the Landlord paid \$120.00 to have the carpets cleaned at the end of the tenancy.

The Landlord submitted hydro bills for the period between February 25, 2010 and May 26, 2010, in the amount of \$687.35. The Landlord stated that the Tenant has not paid her share of these bills, for which she is seeking compensation of \$458.23.

The Landlord is seeking compensation, in the amount of \$800.00, for cleaning the rental unit. The Landlord stated that she and her husband and a third individual spent 32 hours cleaning the rental unit, for which she is seeking hourly compensation of \$25.00. The Landlord submitted photographs of the rental unit that clearly establish the rental unit required significant cleaning at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the windows in the rental unit. The Landlord submitted a receipt to show that she incurred this cost. The Landlord stated that the windows were very dirty, although she submitted no photographs of the windows.

The Landlord is seeking compensation, in the amount of \$182.50, for removing garbage from the exterior of the home. The Landlord submitted a receipt to show that this expense was incurred. The Landlord submitted photographs of the exterior of the home that clearly establish a large amount of garbage was left behind.

The Landlord is claiming compensation, in the amount of \$200.00, for replacing a shower head, for repairing a hole in the wall and for repairing two damaged doors. The Landlord stated that her husband spent 8 hours repairing these areas, for which she is seeking hourly compensation of \$25.00. The Landlord submitted photographs of the rental unit that clearly establish there was a large hole in one wall, the shower head was broken, and two doors were damaged.

The Landlord is claiming compensation, in the amount of \$150.15, for the cost of supplies to repair the damage to the rental unit, which includes a new shower head and a replacement door. The Landlord submitted receipts to show that she incurred these costs.

The Landlord is claiming compensation, in the amount of \$576.00, for repainting the rental unit, which includes labour and \$126.00 for paint. The Landlord stated that her husband spent 18 hours painting the unit and that he used paint they had in stock, which she estimates was valued at \$126.00. She stated that the unit was last painted in July of 2009 and that the walls needed painting as they were too dirty to wash.

The Landlord is seeking compensation, in the amount of \$70.56, for re-keying the rental unit. The Landlord submitted a receipt to show that she incurred this cost. The Landlord stated that the unit needed to be rekeyed as the Tenant did not return keys to the rental unit.

The Landlord is seeking compensation for loss of revenue, in the amount of \$1,200.00. She stated that it took approximately three weeks to clean the rental unit and repair the damage to the rental unit; that the rental unit was advertised for rent in the third week of June and that new tenants were located for July 01, 2010.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant is required to pay monthly rent of \$1,200.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord included a term in the addendum to the tenancy agreement that indicated that the yard work is to be shared with the other tenants occupying the residential complex.

Section 6(3)(c) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In these circumstances, I find that the term in the addendum regarding yard maintenance is not enforceable, as it does not clearly outline the expectations. To be enforceable the Landlord should have clearly established the type of yard maintenance that is expected, such as weeding the garden beds; watering the lawn on a weekly basis; or mowing the lawn at least once every two weeks.

In these circumstances the term regarding landscaping is particularly unclear, as the Tenants were to share the responsibility with other occupants living in the residential complex, yet the Landlord does not clarify how the duties will be shared and does not clarify what will happen if the tenants do not share this responsibility equally. I find this places a tenant who wishes to comply with the term at a distinct disadvantage, as they would have additional work if the other tenant did not wish to comply.

As I have determined the term regarding landscaping to be unenforceable, I dismiss the Landlord's claim for compensation for the cost of landscaping.

Based on the addendum to the tenancy agreement that was submitted in evidence, I find that the Tenant agreed to have the carpets professionally cleaned at the end of the tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not comply with this term of the tenancy and that the Landlord is entitled to recover the cost of having the carpets cleaned, which in these circumstances is \$120.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant is required to pay 2/3 of the hydro bills and that she has not paid her portion of the bills from the period between February 25, 2010 and May 26, 2010, in the amount of \$458.23. I therefore find that the Tenant must pay this amount to the Landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, 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. Based on the photographs submitted in evidence, I find it reasonable to believe that it would take 32 hours to clean the rental unit. I therefore find that the Landlord is entitled to compensation of \$800.00 for the time spent cleaning the rental unit, which is based on an hourly rate of \$25.00, which I find to be reasonable compensation labour of this nature.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the windows in the rental unit in reasonably clean condition. Based on the general cleanliness of the rental unit at the end of the tenancy, I find it reasonable to believe that the windows were not cleaned, as stated by the Landlord. I therefore find that the Landlord is entitled to compensation of \$100.00 for the cost of cleaning the windows.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to remove the garbage from the exterior of the rental unit. I therefore find that the Landlord is entitled to compensation of \$182.50 for the cost of removing the garbage.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the damaged shower head, wall and doors. Based on the photographs submitted in evidence, I find it reasonable to believe that it would take 8 hours to repair the damage. I therefore find that the Landlord is entitled to compensation of \$200.00 for the time spent repairing the damage, which is based on an hourly rate of \$25.00, which I find to be reasonable compensation labour of this nature. I further find that the Landlord is entitled to compensation, in the amount of \$150.19, for supplies required to complete the repairs.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to properly clean the walls at the end of the tenancy. Based on the testimony of the Landlord I find that it was reasonable to paint the rental unit. I therefore find that the Landlord is entitled to compensation for the 18 hours spent painting the walls, in the amount of \$450.00, which is based on an hourly rate of \$25.00.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of the paint used for repainting the damage to the blinds. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that the paint used has a value of \$126.00. On this basis, I dismiss the Landlord's claim for compensation for the cost of paint.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to return the keys to the rental unit. I therefore find that the Landlord is entitled to compensation of \$70.56 for rekeying the unit.

Based on the photographs provided by the Landlord and the testimony of the Landlord, I find that the rental unit was left in very poor condition, which contributed significantly to a delay in renting the unit. As the delay in renting the unit contributed significantly to the loss of revenue experienced by the Landlord in June of 2010, I find that the Tenant must pay the Landlord \$1,200.00 in compensation.

I dismiss the Landlord's application for the cost of gas used as a result of problems with this tenancy. I find that this is an administrative cost of being a landlord and that I do not have authority to compensate landlords for costs of this nature.

I dismiss the Landlord's application for the cost of registered mail. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the *Act*. I find that I do not have authority to award any other costs related to a dispute resolution proceeding and I therefore dismiss the Landlord's claim to recover mailing costs.

I find that the Landlord's application has 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 \$3,781.48, which is comprised of \$2,531.48 in unpaid rent, \$1,200.00 in compensation for loss of revenue, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2)(b) of the Act, I hereby authorize the Landlord to retain the Tenant's security deposit of \$600.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$3,181.48. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: December 08, 2010.

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Dispute Resolution Officer