



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes**

Landlords: MND, MNSD, FF, O  
Tenant: MNSD

### **Introduction**

This hearing was convened by way of conference call to deal with applications filed by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; for an order permitting the landlords to retain all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for recovery of double the amount of the security deposit or pet damage deposit.

Both landlords and the tenant attended the conference call hearing, and the tenant called a witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on their testimony. All evidence and testimony provided has been reviewed and is considered in this Decision.

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

Are the landlords entitled to a monetary order for damage to the unit, site or property?  
Are the landlords entitled to retain all or a portion of the security deposit or pet damage deposit in full or partial satisfaction of the claim?  
Is the tenant entitled to recovery or double recovery of the security deposit or pet damage deposit?

### **Background and Evidence**

This month-to-month tenancy began on February 28, 2009 or March 1, 2009; the parties do not agree on the date. The parties do agree that the tenancy ended on September 30, 2010, rent in the amount of \$500.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. On January 17, 2009 the landlords collected a security deposit from the tenant in the amount of \$250.00. No pet damage deposit was collected. The parties also agree that the landlords received the tenant's

forwarding address in writing on August 30, 2010 on the notice to end the tenancy provided by the tenant.

A move-in condition inspection report was completed at the outset of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy. The two inspections were completed on the same form, and a copy was provided in advance of the hearing. The landlords provided a list of damages that they claim against the tenant, the first of which is the cost for carpet cleaning. They testified that there were stains on the carpet for which the tenant is responsible, and that the stains were above normal wear and tear. The move-in/out condition inspection report shows that the condition of the carpet in the living room at move-in was, "carpet nailed down in middle; needs cleaning in spring; also a few wax drips on carpet." At move-out it states, "needs cleaning by landlord – bad stain." The landlord claims \$87.21 for 2 ½ hours at \$25.00 per hour for the landlord's time as well as \$17.00 for hydrogen peroxide and \$7.71 for cleaning solution, and stated that the wax drips were very small.

The landlords also claim \$159.20 for painting the bedroom. They stated that the tenant smoked in that room, and when the parties conducted the move-out condition inspection, the landlords could only smell sweet grass, a pleasant aroma, and they feel the tenant deliberately put sweet grass in that room to cover the smoke smell so it wouldn't be noticeable when the inspection was completed. The inspection shows that the carpet in that room needed cleaning in the spring at the outset of the tenancy, and was still needed at the end of the tenancy, as well as a small mark on the ceiling, but no marks appear beside walls or trim at move-in or at move-out on that report. The cost is broken down to 4 hours of the landlord's time at \$25.00 per hour, \$20.00 for primer and \$39.20 for a gallon of finish paint. They stated that they had paint on hand, so did not provide a receipt, and that the unit had been painted about 2 years prior to the commencement of this tenancy.

The landlords also claim \$97.50 for a broken window in the kitchen. That cost is broken down to \$20.00 for the cost of the window, \$25.00 for installation time, \$15.00 for gasoline and \$37.50 for their travel time. They testified that they could not get a window locally, the window needed a hole cut in it for a handle, and that also could not be done locally. The landlords had to travel to the next town to make the purchase, and did the work themselves. They stated that the window was from the late '70s or early '80s.

The landlords also claim \$115.58 for a broken screen in the bedroom. They provided an estimate of \$38.08 from a window company, and claim \$15.00 for gas and \$37.50 for travel time again, as well as \$25.00 for installation time.

The landlords also testified that the tenant had admitted that her son broke a venetian blind in a bedroom. They provided a receipt in the amount of \$12.29 for replacement, and claim that cost as well as \$12.50 for installation time. They stated that they did not notice the broken blind when the move-out condition inspection report was completed.

The landlords further claim \$12.50 for a half hour at \$25.00 per hour to clean the stove and another \$6.00 for cleaning the broiler tray. The move-in/out condition inspection report shows that the stove was fine at move-out.

The landlords also claim \$50.00 for replacement cost for a vacuum cleaner loaned to the tenant at the outset of the tenancy. They stated that a clip had broken off and could not be repaired or even replaced for that cost, although they did not provide any evidence or testimony about their attempts to have it repaired.

The landlords further claim \$30.00 for the replacement of a broken wooden chair. They stated that the chair was left there by a previous tenant and would have cost a minimum of \$25.00 to repair it. When questioned about the age of the chair, the landlords responded that they didn't know the age.

The landlords also testified that the tenant and her witness had an appointment to attend, and therefore the move-out condition inspection report was completed in a rush, and other damages were noticed after the report was completed. They also provided photographs of the carpet, chair, blinds and vacuum cleaner.

The tenant testified that the landlords added things to the move-out condition inspection report after the tenant had signed it, and the landlords did not dispute that testimony. The tenant further stated that the landlord was to clean the carpet at the outset of the tenancy and didn't do so.

The tenant also testified that there were a lot of people looking at the suite before she moved out, and the landlords were in the unit several times; no one complained about the smell of cigarette smoke. She further testified that she never smoked in the rental unit. She stated that the landlord had a complaint about smoking, checked the unit, and did not smell any cigarette smoke.

The tenant also testified that the stove was cleaned by her mother, who cleans for a living, and the landlord stated at move-out that it looked good.

The tenant agrees to the kitchen window cost and the blind in the bedroom, but stated that the chair was old and eventually cracked. With respect to the bedroom screen, the tenant testified that the landlord saw it at move out but stated that they had lots of

screens and told the tenant to not worry about it. She further pointed out that the screen is not listed on the move-out condition inspection report.

The tenant also disputes the landlord's testimony that they had to travel to another town to get a window replacement or screen; they could have been ordered locally. She also stated that the landlord provided the tenant a bill for \$285.69 for damages on October 14, 2010, and then increased it to \$582.78 with this application.

Further, the tenant and her witness had no appointment to attend to after the inspection was completed, and testified that new tenants were waiting to move in, which was the reason for rushing.

The tenant's witness testified that she was at the unit for 5 hours cleaning the stove among other things in the unit. She stated that the male landlord did not show for the move-out condition inspection, and the female landlord was a half hour late. The landlord, tenant and witness sat at the table, and the tenant mentioned right away that the window had broken, and heard the landlord reply that the window was very old and was going to be replaced. She further testified that the parties looked around the kitchen and then the rest of the apartment. The landlord seemed quite satisfied and ticked off items on the move-out condition inspection report.

The witness also testified that the apartment faces a busy street which has two pubs, and she does not believe the tenant ever smoked in the apartment. She stated that she was at the unit often during the tenancy, and has never seen the tenant smoke inside, nor did she smell cigarette smoke.

The witness also testified that there were most definitely stains on the carpet when the tenant moved in, and heard the landlord say that they hoped the tenant didn't mind the condition, and promised to be back to clean them in the spring, but didn't. The stains may be larger, but only as a result of normal wear and tear.

### **Analysis**

With respect to the landlords' application for damage to the unit, site or property, as explained during the course of the hearing, the onus is on the claiming party to prove the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of the damage or loss;

4. What efforts the claiming party made to mitigate, or reduce the damage suffered or the loss.

I find that the landlords have failed to establish that the tenant is responsible for carpet cleaning. The carpet required cleaning at the outset of the tenancy. I accept that the stains may be larger at the end of the tenancy, however the landlord's responsibility was to ensure the unit was clean prior to the tenant moving in. Also, the landlords may want the rental unit to be in a pristine condition in order to show it to perspective tenants, but the responsibility of the tenant is to leave the unit reasonably clean and undamaged. I find that the tenant cannot be held responsible for cleaning a carpet that the landlord ought to have cleaned prior to the commencement of the tenancy. I also find that the same analysis applies to the landlords' claim for cleaning the stove. The witness testified that she cleaned it, and evidence of the parties is that the landlord indicated at move-out that it looked good. The move-out condition inspection report also shows that the appliance was good.

With respect to painting the bedroom, the landlords feel that the tenant hid the smell of cigarette smoke with sweet grass so that it would not be noticeable during the move-out condition inspection. The tenant testified that she did not smoke anywhere in the unit, and the witness corroborated that evidence for any time that the witness was there, and she testified she was there alot. I also heard evidence that an anonymous person told the landlord that the tenant was smoking during the tenancy, but the landlord checked on it and found no smoke smell. I cannot find that the landlord has established that the room needed painting due to cigarette smoke.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37 which sets the useful life of a window at 15 years. The landlords testified that the broken window was a '70s or early '80s window, putting it at least 30 years, and I find that the landlords cannot hold the tenant responsible for replacing it. The same applies to the broken chair; I find that the chair was not new when the tenant moved into the unit, the landlords obtained it second-hand, and the landlords have failed to establish the replacement cost or if they are even entitled to replacement of that item.

With respect to the broken screen in the bedroom, I find that the landlord has established a claim in the amount of \$38.08 in addition to \$12.50 for installation. I do not accept that the tenant should be responsible for travel time and gasoline for the landlords' choice of attending at another town to purchase a screen. The evidence

before me is that the landlord told the tenant at move-out that they had plenty on hand, and the landlord ought to have been able to mitigate any loss of time or gasoline by ordering a screen to be delivered if they didn't have one on hand.

The tenant agreed with the broken blind in the bedroom, and I find that the landlord has established a claim for \$24.79 for that item.

There is no evidence before me that the vacuum cleaner wasn't broken at the outset of the tenancy, or that it was used by the tenant during the tenancy. I find that the landlord has failed to establish element 2 of the test for damages.

I further find that the landlords added items to the condition inspection report after the tenant had signed it, and therefore cannot be relied upon as agreed to by the tenant.

With respect to the tenant's claim, I find that the landlord failed to return the security deposit or apply for dispute resolution claiming against the security deposit within the 15 days provided for in the *Act*. I find that the tenancy ended on September 30, 2010 and the landlord received the tenant's forwarding address in writing on August 30, 2010. The landlords applied for dispute resolution on January 21, 2011, and therefore the tenant is entitled to double recovery of the security deposit, for a total of \$500.00.

Since both parties have been partially successful with their claim, I decline to order that either party recover the filing fee from the other party for the cost of this application. I also find that the awards should be set off from one another pursuant to Section 72 (2) (b) of the *Residential Tenancy Act*.

### **Conclusion**

For the reasons set out above, I hereby grant a monetary order in favour of the tenant in the amount of \$424.63. 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: March 02, 2011.

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Residential Tenancy Branch