



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MND, MNSD, FF

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damages; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution and Notice of Hearing. The Agent for the Landlord acknowledged receipt of the Tenant's Notice of Hearing but stated that he has never received a copy of the Tenant's Application for Dispute Resolution. The Tenant stated that she did serve the Landlord with a copy of her Application for Dispute Resolution. At the hearing the Agent for the Landlord was advised that the Tenant was applying for the return of her security deposit and to recover the filing fee. As this issue is the same as issues raised by the Landlord, the Agent for the Landlord indicated that he was prepared to proceed with the hearing at this time.

The Landlord submitted evidence to the Residential Tenancy Branch, a copy of which was served to the Tenant. The Tenant acknowledged receipt of this evidence and the evidence was considered when determining this matter. The Tenant did not serve evidence to the Landlord.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit; whether the Landlord is entitled to retain all or part of the security deposit or whether it should be returned to the Tenant; and whether either party is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2009; that the Tenant was required to pay monthly rent of \$829.99; that the Tenant paid a security deposit of \$414.50; that the tenancy ended on September 30, 2010; that the Tenant provided the Landlord with her forwarding address on September 30, 2010; that the Landlord and the Tenant jointly completed a condition inspection report on January 23, 2009, prior to the beginning of this tenancy; and that the Landlord and the Tenant jointly completed a condition inspection report on September 30, 2010, at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$151.20 for cleaning the carpet in the rental unit. The Landlord submitted a receipt to show that the Landlord paid \$151.20 for cleaning the carpets. The Tenant agreed that the Landlord is entitled to compensation in this amount.

The Landlord is seeking compensation, in the amount of \$32.48 for repairing a counter bracket on the kitchen countertop above the dishwasher and for re-caulking the countertop in that area. The Landlord submitted a photograph of the countertop where the countertop has separated from the wall.

The Tenant stated that she did not notice that damage to the countertop, that it was not noted on the Condition Inspection Report, and that the damage may have occurred when the dishwasher was replaced during her tenancy.

The Agent for the Landlord agreed that the dishwasher was replaced during this tenancy, although he does not recall the counter top being damaged during this repair.

The Landlord is seeking compensation, in the amount of \$267.36 for repairing and painting the walls in the rental unit. The Landlord submitted a receipt to show that the Landlord paid \$267.36 to repair and paint the walls in the bedroom and main living area, which includes the kitchen. The Tenant agreed that the walls were damaged by double sided tape she used to attach posters to the wall, although she believes that the amount of the claim is exaggerated.

The Agent for the Landlord stated that the rental unit was newly painted in January of 2009. The Tenant stated that she does not believe that walls had been newly painted at the beginning of her tenancy.

The Landlord is seeking compensation, in the amount of \$337.86 for repairing and painting the balcony wall. The Landlord submitted a receipt to show that the Landlord paid this amount to repair and repaint the balcony wall. The Tenant agreed that the balcony wall was damaged by double sided tape, although she believes that the amount of the claim is exaggerated.

The Agent for the Landlord stated that he does not know when the exterior walls were last painted. He stated that the walls are stucco over cement and are not frequently repainted. The Tenant stated that the walls are painted cement.

The Landlord submitted a photograph of the balcony wall which demonstrates the damage caused by the double sided tape.

The Landlord and the Tenant agreed that when the Condition Inspection Report was completed on September 30, 2010, the Tenant signed the report to indicate that she authorized the Landlord to deduct the cost of cleaning the carpets and repairing the walls from her security deposit. The parties agreed that an amount for the repairs/cleaning was not recorded on the Condition Inspection Report.

The Landlord and the Tenant agreed that when the Tenant entered into this agreement she advised the Agent for the Landlord that she wanted receipts for the cost of cleaning the carpet and repairing the damages but that those receipts were not provided to her until they were served as evidence for these proceedings. The Agent for the Landlord stated that he advised the Tenant that the cost of repairs/cleaning would likely exceed the amount of her security deposit. The Tenant stated that she believed the cost of the repairs/cleaning would be approximately \$200.00.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that this tenancy began on February 01, 2009; that it ended on September 30, 2010; that the Tenant paid a security deposit of \$414.50; that the Tenant provided the Landlord with her forwarding address on September 30, 2010; that the Landlord and the Tenant jointly completed a condition inspection report on January 23, 2009; and that the Landlord and the Tenant jointly completed a condition inspection report on September 30, 2010.

Section 21 of the Residential Tenancy Regulations stipulates that a condition inspection report that is completed in accordance with the legislation is evidence of the state or repair and condition of the rental unit on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary. As Landlord and the Tenant both signed the Condition Inspection Report that was initiated at the beginning of this tenancy and completed at the end of this tenancy, I find that this report fairly represents the condition of the rental unit at those times.

As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$151.20 for cleaning the carpets, I find that the Landlord is entitled to compensation in this amount.

I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged the kitchen countertop during this tenancy. As the dishwasher was replaced during this tenancy and the counter is damaged above the dishwasher, I find it is entirely possible that the countertop was damaged during the replacement. I also find it entirely possible that the countertop separated from the wall during normal wear and tear. As the Landlord has failed to establish that the Tenant damaged the countertop, I find that the Tenant is not obligated to repair the countertop. On this basis, I dismiss the Landlord's claim for compensation for repairing the countertop.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the damage caused to the walls when she applied double sided tape to the interior walls. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In the absence of evidence to support the Tenant's argument that the amount of this claim for repairing and repainting the walls is unreasonable, I find that the claim is reasonable. In reaching this conclusion, I was heavily influenced by the receipt that corroborates the Agent for the Landlord's statement that the Landlord paid \$267.36 to repair and repaint the walls.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of repainting a rental unit, a claim for damage and loss is based on the depreciated value of the finish and is not based on the total cost of repainting. This is to reflect the useful life of paint, which depreciates through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years, which I find to be reasonable. In the absence of evidence that corroborates the Tenant's belief that the rental unit was not painted in January of 2009, I accept the Agent for the Landlord's testimony that he painted the rental unit in January of 2009, which means it was approximately 1.5 years old at the end of this tenancy. I therefore find that the paint in the rental unit had depreciated by 37.5% at the end of the tenancy, and that the Landlord is entitled to 62.5% of the cost of repainting the living room, which in these circumstances is \$167.10.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the damage caused to the balcony wall when she applied double sided tape to the interior walls. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In the absence of evidence to support the Tenant's argument that the amount of this claim for repairing and repainting the walls is unreasonable, I find that the claim is reasonable. In reaching this conclusion, I

was heavily influenced by the receipt that corroborates the Agent for the Landlord's statement that the Landlord paid \$337.86 to repair and repaint the walls.

The Residential Tenancy Policy Guidelines show that the life expectancy of exterior paint is eight years, which I find to be reasonable. In the absence of evidence from the Landlord that establishes when the balcony was last painted and on the basis of the wall that was submitted in evidence, I find that the wall has likely not been painted in the last eight years. In reaching this conclusion I was heavily influenced by the photograph of the wall, which does not depict a wall in pristine condition. I therefore find that the paint on this exterior wall has exceeded its life expectancy and I find that the Landlord is not entitled to compensation for repairing and repainting this wall. In reaching this conclusion I note that the Landlord could cover the small damaged areas with touch-up paint and that a repair of this nature would not significantly detract from the appearance of this wall, which does not appear to have been recently painted. I find that the cost of such repairs would be insignificant.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution until February 14, 2011.

Section 38(4)(b) of the *Act* stipulates that the landlord is not required to comply with section 38(1) of the *Act* if the tenant has authorized the landlord to retain an amount from a security deposit that the tenant agrees, in writing, that the landlord may retain that amount. In my view, section 38(4)(b) of the *Act* requires a tenant to specify a specific amount that can be retained from their security deposit.

In these circumstances, the Tenant authorized the Landlord to retain an unspecified amount for the purposes of repairing walls and cleaning the carpet. The parties did not agree on the cost of the cleaning or the repairs. In my view, therefore, the Landlord did not have written authority to retain an amount from the Tenant's security deposit, pursuant to section 38(4)(b) of the *Act*. As the Landlord did not have authority to withhold a specific amount of the security deposit pursuant to section 38(4)(b) of the *Act*, I find that the Landlord was obligated to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

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.

I find that the Tenant's application has merit, and I find that the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$323.30, which is comprised of \$151.20 for cleaning the carpets, \$167.10 for repairing and painting the interior walls, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Tenant has established a monetary claim, in the amount of \$829.00, which is comprised of double her security deposit and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two monetary claims, I find that the Landlord owes the Tenant \$505.70. Based on these determinations I grant the Tenant a monetary Order for the amount \$505.70. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: March 02, 2011.

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Residential Tenancy Branch