



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MND, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with the landlord's application for a monetary order as compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began August 15 and ended November 30, 2010. Monthly rent was \$750.00, and a security deposit of \$375.00 was collected. While the parties agree that a walk-through of the unit was undertaken at the beginning and end of tenancy, there is neither a move-in nor move-out condition inspection report in evidence.

The landlord testified that the tenants had not finished cleaning the unit by 1 p.m. on the last day of their tenancy, November 30, 2010, and that the unit was in need of additional cleaning and certain repairs after they vacated. Further, he testified that while new renters were prepared to take possession on December 1, 2010, when they viewed the unit on November 30, 2010, they considered that the cleaning and repairs were not likely to be completed in time for them to move in the following day, December 1, 2010. In the result, they requested that the landlord return their security deposit and new renters were not found until 1 month later on January 1, 2011. The dispute centres around what responsibility the tenants bear for costs incurred / income lost in the circumstances of this tenancy that was limited to 3 and 1 half months.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/) The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 32: **Landlord and tenant obligations to repair and maintain**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

Residential Tenancy Policy Guideline # 5 addresses “Duty to Minimize Loss,” and provides in part as follows:

.....the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate.

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The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

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The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The dispute resolution officer may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

If the dispute resolution officer finds that the party claiming damages has not minimized the loss, the dispute resolution officer may award a reduced claim that is adjusted for the amount that might have been saved.

Section 63 of the Act (**Opportunity to settle dispute**) provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, the parties agreed that the tenants will bear responsibility for the following specific costs:

**\$10.00\***: broken blind.

**\$35.00\***: cleaning stove.

**Sub-total #1: \$45.00**

The remaining aspects of the landlord's claim and my respective findings are as follows:

**\$30.00**: replacement of stove element. The landlord testified that the stove and all of its component parts were less than 3 years old. In consideration of the age of the piece in question, and in the absence of a receipt in support of the cost of a new replacement part, and in the absence of either move-in or move-out condition inspection reports, I find on a balance of probabilities that the landlord has established entitlement limited to **\$7.50\***, which is 25% of the amount claimed.

**\$320.00**: labour and materials for repairs and painting of damaged walls. The landlord testified that the unit had been newly repainted before the start of this tenancy, and that when the tenancy ended, 5 walls required patching and repainting. For their part, the tenants testified that they left holes in some walls which were larger than pin holes or tack holes, and acknowledged that these would need to be patched and, in some cases, repainted. In the absence of either receipts in support of the cost of paint or other supplies, or comparative move-in and move-out condition inspection reports, I find on a balance of probabilities that the landlord has established entitlement limited to **\$100.00\***.

**\$375.00**: loss of rental income for December 2010. Section 37(1) of the Act provides that unless the parties have agreed otherwise, "the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends." As earlier noted, the tenants acknowledged that they were still in the process of cleaning the unit after 1 p.m. on the last day of tenancy, and that additional cleaning, as well as certain repairs were left for the landlord to complete after they vacated. In the absence of any testimony from the prospective tenants, or evidence of advertising for new tenants which may have been undertaken by the landlord, or move-in and move-out condition inspection reports, I find that the landlord has established entitlement limited to **\$169.33\***, which is 1 week's rent for December 2010, calculated as follows:

$$\$750.00 \text{ (monthly rent)} \div 31 \text{ (number of days in December)} = \$24.19 \text{ (daily rent)}$$

$$\$24.19 \text{ (daily rent)} \times 7 \text{ (number of days in 1 week)} = \underline{\underline{\$169.33}} \text{ (entitlement)}$$

**\$50.00\***: filing fee. As the landlord has achieved a measure of success with this application, I find that he is entitled to the full amount claimed.

**Sub-total #2: \$326.83**

In summary, I find that the landlord has established a claim of \$371.83. This is comprised of the amount agreed to between the parties of \$45.00, in addition to the amount that I have found the landlord has established entitlement to which is \$326.83 (\$45.00 + \$326.83).

**Conclusion**

Following from all of the above, I ORDER that the landlord retain \$371.83 from the security deposit of \$375.00, and I ORDER the landlord to pay the balance to the tenants in the amount of \$3.17 (\$375.00 - \$371.83).

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*.

DATE: April 29, 2011

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Residential Tenancy Branch