



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### **Introduction**

This application was brought by the landlord on December 15, 2010 seeking a Monetary Order for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a matter of note, the landlord submitted a package of evidence to the branch which is date stamped as received on April 26, 2011 for the hearing on April 28, 2011. The landlord stated that she had sent the same package to the tenant by registered mail on April 20, 2011 which the tenant had not seen as he is vacationing out of the country.

Item 3.5 a) under the Rules of Procedure requires that evidence must be in the hands of the Branch and the other party to the dispute at least five days in advance of the hearing. Days are defined as business days under the Definitions section of the Rules and weekends and statutory holidays are not included in the calculation. In the present matter, the hearing was preceded by the Easter long weekend including two statutory holidays. As to the package sent to the tenant, items sent by registered mail are deemed to have been received five days later which would have been April 25, 2011, also short of the five-day requirement. Therefore, I find that the evidence was late.

While Rule 11.6 would permit me to adjourn the hearing under such circumstances, I find that with the application having been made over four months in advance of the hearing, giving the applicant ample to time to submit evidence, and given the relative simplicity of the claims at issue, an adjournment was not appropriate..

### **Issues to be Decided**

This matter requires a decision on whether the landlord is entitled to monetary compensation for the damages claimed taking into account whether they are proven, attributable to the tenant, reasonable and proven as to amounts claimed and whether the landlord acted reasonably to minimize the losses.

As this tenancy lasted over five years, reasonable wear and tear are factors that must be taken into account as well as the fact that the move-out condition inspection report was not been completed.

### **Background, Evidence and Analysis**

This tenancy began on May 30, 2005 and ended on November 30, 2010. Rent was \$1,545 per month and the landlord holds a security deposit of \$700 paid on May 20, 2005.

During the hearing, the landlord articulated the following claims on which I find as follows:

**Carpet cleaning - \$100.** The landlord submits that the tenant did not have the carpets professionally cleaning as required under the rental agreement. The tenant stated that he had the landlord's prior consent to clean them himself with rented equipment, an agreement challenged by the landlord.. Given the contradictory very accounts by the parties, I revert to the written agreement and allow this claim in full.

**Replacement of glass - \$247.52.** The landlord submits this claim for the cost of replacing a missing pane of glass in an interior French door and the glass on an exterior window. The tenant stated the pane on the door had been broken when he moved in to the rental unit and that it had been the subject of notes from him to the property manager's predecessor. He stated also that the crack on the double paned exterior window was on the outer pane and had resulted from some exterior or natural cause. In the absence of definitive proof to the contrary, I find for the tenant and the claim is dismissed.

**General cleaning - \$192.** The tenant vigorously contested this claim and he and his spouse provided detailed descriptions of work by them and other family members to leave the rental unit clean. The landlord stated that further cleaning was ordered following receipt of a letter from the successor tenants who moved in on December 4, 2010 and the staff member who did the cleaning testified that she spent about eight hours completing the work. Based on the conflicting evidence, I find exaggeration in both accounts and find that this cost should be split equally between the parties.

**Plumbing cost re plugged kitchen drain - \$336.** The landlord makes this claim on the grounds of plumbing services on July 8, 2010 to clear a plugged kitchen drain. The landlord stated that the garbage disposal unit was broken through improper use resulting in an extraordinarily large accumulation of kitchen waste. The landlord stated that this cost had been passed along by the strata corporation on August 12, 2010. The tenant stated that the blockage was more likely caused by a breakdown of the garbage disposal unit and he said the unit had never been used dry as claimed by the landlord. The tenant further suggested the claim was vexatious due to his reluctance to agree to surrender of the security deposit. The age of the disposal unit at least predated the five year tenancy and may well have been older and it failure the result of normal wear and tear. In addition, I find that this claim should have been filed contemporaneously to the damage claimed in July or August 2010 rather than in the post tenancy application for damages in December 2010. This claim is dismissed.

**Filing fee - \$50.** As the application has only partially succeeded, I find that the filing fee should be split equally between the parties.

**Security deposit – (\$700 plus \$24.79 Interest).** As authorized under section 72 of the Act, I find that the landlord is entitled to the amount awarded herein from the tenant's security deposit in set off against the balance owed and must return the balance to the tenant.

Thus, I find that accounts balance as follows::

<b>Tenant's Credits</b>		
Security deposit	\$700.00	
Interest (May 20, 2005 to date)	<u>24.79</u>	
Sub total	\$724.79	\$724.79
<b>Award to Landlord</b>		
Carpet cleaning	\$100.00	
General cleaning (\$192/2 = \$96)	96.00	
Filing fee (\$50/2 = \$25)	<u>25.00</u>	
Sub total	\$221.00	- <u>221.00</u>
<b>TOTAL balance of security deposit due to tenants</b>		<b>\$503.79</b>

## **Conclusion**

The landlord is hereby authorized to retain \$221 from the tenant's security deposit and must return \$503.79 to the tenant.

To conclude this matter, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$503.79 for service on the landlord.

April 28, 2011