



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

### **Introduction**

This hearing was convened in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

At the outset of the hearing the landlord requested an adjournment. Reasons cited for the request include a claim that all costs and/or receipts and/or invoices associated with cleaning and repairs in the unit after the end of tenancy, are still not either known or available. The landlord also stated that she is busy with her profession and, that as the unit is located elsewhere in the Province, she is at a disadvantage in having to deal with management of the unit / tenancy "from a distance." Further, the landlord stated that there were problems and shortfalls in the way in which the property manager undertook to manage the rental unit on her behalf.

The tenant objected to the landlord's request, citing the lengthy period of time that has elapsed since the tenancy ended and the landlord's application was filed. The tenancy concluded at the end of February 2011, and the landlord's application was filed on March 14, 2011.

After considering the reasons for the landlord's request, as well as the position taken by the tenant, I find there is insufficient evidence that the landlord has taken all reasonable steps or exercised due diligence in pursuing her application and preparing for the hearing. I also find that a further delay in proceeding to resolve this dispute would be incongruous with the Objective of the Rules of Procedure, which is to "ensure a consistent, efficient and just process for resolving disputes."

Accordingly, the landlord's request was denied and the hearing proceeded as scheduled.

### **Issues to be decided**

- Whether the landlord is entitled to any of the above under the Act

## **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on or about September 15, 2009. The parties appear to agree that the tenancy ended on or about February 28, 2011. Monthly rent was \$1,400.00 and a security deposit of \$700.00 was collected.

A move-in condition inspection report is not in evidence. The landlord testified that a blank move-in condition inspection form was provided to the tenant near the start of tenancy and, while he was requested to complete it, he did not.

However, there is a completed move-out condition inspection report in evidence, and the tenant acknowledges completed a move-out condition inspection with the landlord's agent. The landlord expressed her dissatisfaction with the accuracy of the move-out condition inspection report.

During the hearing the tenant confirmed that he consented at the time of the move-out condition inspection, to certain very specific deductions being made from his security deposit, as follows:

\$112.00: *carpet repair*

\$200.00: *strata fine*

Total: \$312.00

The tenant objects to all other aspects of the landlord's application to recover costs.

## **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)

Section 23 of the Act addresses **Condition inspection: start of tenancy or new pet**, and provides in part, that the "landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day." Further, this section of the Act provides that the "landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection" and, further, that the "landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations." Based on the documentary evidence and testimony of the parties, I find that the aforementioned procedures were not carried out in this tenancy.

Section 24 of the Act speaks to **Consequences for tenant and landlord if report requirements not met**, and provides in part, that the “right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished” if the landlord does not comply with the requirement to provide the tenant with 2 opportunities for the inspection, or if the landlord “does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.”

The various aspects of the landlord’s application and my findings around each are set out below:

**\$300.00:** shower doors. There is conflicting evidence concerning this aspect of the application. The tenant takes the position that 1 of 2 shower doors in the master bedroom broke / shattered through no fault of his own. In a copy of a letter included in the landlord’s evidence, the building manager agrees by way of his signature on the letter that “it was likely that [the tenant] bumped into the door with his wheelchair, and when the metal hit the door it exploded.” Following the tenant’s report of this damage, the second door to the shower was removed and a shower curtain was installed. While there is no evidence that the broken shower door has been repaired or replaced, and/or that any related cost has presently been incurred by the landlord, I find on a balance of probabilities that the tenant bears some portion of responsibility for the damage and, accordingly, I find that the landlord has established entitlement limited to **\$100.00\***.

**\$80.00\***: carpet cleaning. Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and provides in part that, “at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.” The tenant claims that he rented the necessary equipment and cleaned the carpets himself at the end of tenancy. It is documented on the move-out condition inspection report that carpet in the master bedroom “needs cleaning.” Having considered the documentary evidence and testimony, I find on a balance of probabilities that the carpet was not sufficiently cleaned at the end of tenancy, and that the landlord has therefore established entitlement to the full amount claimed.

**UNKNOWN COST:** repairs to scratched front door and kitchen island. There is no evidence that these repairs have been completed or, if they have, what costs were incurred. Despite this, in view of the tenant’s claim that these scratches were present when the tenancy began, and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

UNKNOWN COST: *painting of the unit*. As stated immediately above, there is no evidence that painting has been done or, if it has, what costs were incurred. In her written submission the landlord states that the “unit may have to be repainted...” In any event, in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$50.00: *document service fees*. Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

**\$312.00\***: *strata fines and repairs paid*. As the tenant testified that he does not dispute that he is responsible for these costs, I find that the landlord has established entitlement to the full amount claimed.

\$75.00: *move-out fee*. In the absence of any documentary evidence to support the existence of such a fee, or that if such a fee is required to be paid, it is the tenant’s responsibility to pay, this aspect of the application is hereby dismissed.

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

### **Conclusion**

Following from the above, I hereby ORDER that the landlord retain **\$542.00** (\$100.00 + \$80.00 + \$312.00 + \$50.00) from the tenant’s security deposit.

The landlord is hereby ORDERED to repay FORTHWITH the balance to the tenant in the amount of **\$158.00** (\$700.00 - \$542.00), and I hereby issue a **monetary order** in favour of the tenant to that effect. This order may be served on the landlord, filed in the 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*.

DATE: June 23, 2011

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Residential Tenancy Branch

