



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes (MND), MNSD, (FF)

### Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlords said they served the Application and Notice of Hearing (the "hearing package") on the Tenants by registered mail to their forwarding address on February 24, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to pick up that mail. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

1. Are the Landlords entitled to compensation for cleaning and repair expenses and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on August 15, 2007 and ended on February 5, 2011 when the Tenants moved out. Rent was \$1,610.00 per month payable on the 15<sup>th</sup> day of each month. The Tenants paid a security deposit of \$750.00 at the beginning of the tenancy.

The Landlords did not complete a move in condition inspection report at the beginning of the tenancy however they claimed the rental unit was in a good state of repair and freshly painted at that time. The Landlords said the Tenants gave them written notice they were ending the tenancy on February 15, 2011 but then sent them an e-mail on February 5, 2011 which stated they were moving out that day instead. The Landlords said the Tenants asked to do a move out inspection 2 hours later however they did not get the e-mail on that day and could not contact the Tenants to make other arrangements. The Landlords did not complete a move out condition inspection report however they took photographs of the rental unit after they discovered that the Tenants had vacated.

The Landlords said there was excessive damage to the walls in the rental unit and as a result, they incurred expenses for drywall repairs and painting. In particular, the Landlords claim that the Tenants used a room in the basement as a day care and it had crayon marks and an excessive number of holes on the walls. The Landlords said the Tenants had also secured a set of stairs to a window as an emergency exit and in doing so, left a number of large bolt-sized holes in the wall. The Landlords also claimed that the Tenants had attempted to patch some holes but did not do it correctly and they had to be removed and done properly. The Landlords further claimed that the living room walls were damaged when paint peeled off from the removal of tape and large sink screws.

The Landlords also claimed that the carpets were stained and had discolouration around the pellet stove area where they had been burned. Consequently, the Landlords also sought to recover carpet cleaning expenses. The Landlords further claimed that 2 sets of blinds were missing at the end of the tenancy and they sought compensation of \$40.00 each to replace them.

### Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." Consequently, in this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the damages for which they seek compensation were caused by an act or neglect of the Tenants rather than from reasonable wear and tear.

RTB Policy Guideline #1 at p. 3 says that a tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. In the absence of any evidence from the Tenants to the contrary, I find that the Tenants left an unreasonable number of holes in the walls as well as large holes from bolts and/or sink screws and damage from tape and crayon marks. I find that this damage is the result of neglect rather than reasonable wear and tear and as a result, I find that the Landlords are entitled to recover their repair and painting expenses of \$1,026.41.

RTB Policy Guideline #1 at p. 2 says that a tenant is responsible for steam cleaning or shampooing carpets at the end of a tenancy of a year or longer and will also be responsible for cleaning carpets (regardless of the length of the tenancy) if he or she has stained or soiled the carpets. In the absence of any evidence from the Tenants to the contrary, I find that the carpets in the rental unit were not reasonably clean at the end of the tenancy and therefore I find that the Landlords are entitled to recover carpet cleaning expenses of \$134.23.

In the absence of any evidence from the Tenants to the contrary, I also find that they are responsible for replacing 2 missing blinds from the rental unit and as a result, I find that the Landlords may recover \$80.00 for this expense. As the Landlords have been successful in this matter, they are also entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee they paid for this proceeding. In summary, the Landlords have made out a total monetary claim for \$1,290.64.

Sections 23 and 35 of the Act require a landlord to complete a condition inspection report at the beginning and at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection(s) or to sign the condition inspection report(s). In failing to complete the condition inspection report when the Tenants moved in and again when they moved out, I find the Landlords contravened the Act. Consequently, s. 24(2) and s. 36(2) of the Act say that the Landlord's right to keep the security deposit for damages to the rental unit is extinguished.

I find however, that sections 38(4), 62(3) and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to keep the Tenants' security deposit of \$750.00 and accrued interest of \$15.60 in partial satisfaction of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$525.04.

### Conclusion

A Monetary Order in the amount of **\$525.04** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 06, 2011.

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Residential Tenancy Branch