



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit and to retain all or part of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$3,000.00?

May the landlord retain the deposits in partial satisfaction of the claim?

### Background and Evidence

The tenancy commenced on April 13, 2010 and was a fixed term ending April, 14, 2011. Rent was \$2,100.00 per month, due on the 15<sup>th</sup> day of each month. Security and pet deposits in the sum of \$1,050.00 each were paid at the start of the tenancy.

A move-in condition inspection report was completed at the start of the tenancy; the facts relating to the move-out inspection are in dispute.

The tenants vacated the rental unit on February 17, 2011.

The landlord has made the following claim:

Remote control	150.00
Painting	450.00
Fence replacement	1,320.00
Power wash yard	180.00
Cleaning and carpet cleaning	560.00
Replace curtains	200.00
Repair dent in fridge and stove	150.00
TOTAL	3,150.00

The tenants acknowledged they owed the landlord compensation for 1 remote control in the sum of \$150.00 and that the landlord was entitled to painting costs in the amount of \$450.00.

The parties did not agree on the circumstances in relation to the move-out condition inspection report. The landlord stated that an appointment was set for February 15, 2011, and that when she arrived the tenants were not finished moving. The landlord arranged to return on the 16<sup>th</sup>, but when she called, the tenants were still not ready to complete the inspection. The landlord received the keys to the unit on May 17, 2011; the landlord did not complete an inspection report, but did take some photographs of the rental unit.

The tenants stated that the landlord's agent came to the home on February 16, 2011 and agreed that they were not ready to complete the inspection. The next day the tenants returned the keys and were waiting to hear from the home owner, upon her return from a trip, at which point the tenants expected to complete the move-out condition inspection.

The landlord provided pictures of a fence in the backyard that was constructed of green coated chain link. The tenants did not dispute that the fence was damaged and expected to pay approximately \$550.00 to repair the fence. The tenants stated that the landlord's decision to pay \$1,320.00 to repair the fence seemed excessive.

The tenants disputed the need to power wash the yard as they had just power washed the whole yard, and the house. The landlord stated the deck required cleaning.

The landlord had 2 workers clean for 6 hours each. A receipt issued March 17, 2011, was supplied as evidence of cleaning and carpet cleaning. The tenants supplied letters from 2 friends who had assisted them with cleaning at the end of the tenancy. The tenants stated that the marks shown on the carpet in the landlord's photographs were the result of leaks from the skylight; which had been reported to the landlord previously. The landlord confirmed that the skylight was leaking, but believed that marks on the carpet went beyond that caused by the leak.

The landlord provided photographs of the unit which showed a sink with some specks, a line of carpet damage, an exterior sliding door that appears to need cleaning, a dented fridge and stove, curtains that had some pulls and the broken chain link fence. The remaining pictures did not relate to the claim before me.

An April 9, 2011, receipt was supplied as evidence of payment to one individual for painting, fence repair and power washing.

The tenants acknowledged that the dents to the appliance may have been their fault, although they submitted that this was the result of normal wear and tear.

In addition to the deposits paid, as provided by the Act, the landlord also accepted a deposit in the sum of \$300.00 for 2 remote control devices.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for

damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

Section 72(2) of the Act provides:

*(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

*(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*

*(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

There is no evidence before me that the landlord has offered the tenants 2 opportunities to complete the move-out condition inspection, therefore I find that the right of the landlord to claim against the deposit for damages is extinguished. However; pursuant to section 72(2) of the Act, I have set-off the amount owed to the landlord from the deposit held in trust by the landlord.

The tenants have acknowledged responsibility for painting costs in the sum of \$450.00 and remote replacement of \$150.00.

I find that the landlord is entitled to compensation for the 2 days the tenants over held after the tenancy ended on April 14, 2011. Rent for April – May was due on the 15<sup>th</sup>; therefore I find the landlord is entitled to a pro-rated amount in the sum of \$138.08 for the 15<sup>th</sup> and 16<sup>th</sup>.

In relation to the fence, the landlord did not supply any evidence of the type of fence that was erected. Photographs showed that the chain link fencing that remained in the yard at the end of the tenancy had fallen to the ground and was in obvious need of repair. The receipt supplied as evidence of fence replacement supplied by the landlord was not accompanied by any evidence of the type of fence installed, whether fencing materials were reused or any breakdown of the supplies purchased for the fence.

I find that the cost of the fence claimed by the landlord exceeds what would be a reasonable amount for replacement of a fence of similar style and accept, on the balance of probabilities, the tenant's submission that the amount billed by the landlord for this item is excessive. The photographs submitted showed a fence that appeared to have been minimal in strength and substance. Therefore, in the absence of evidence

detailing the cost to replace a fence of similar style and substance, I find that the landlord is entitled to compensation in the sum of \$660.00; one half the amount claimed.

There is no evidence before me that the tenant left the unit in a state that required yard power washing; that portion of the claim is dismissed. The parties disputed the need to power wash and, in the absence of any evidence, such as photographs, showing the need to clean the yard, I dismiss this portion of the claim.

In the absence of a final condition inspection report and written Notice to complete the inspection I find, on the balance of probabilities that the tenants left the rental unit reasonably clean; as required by the Act. The photographs submitted by the landlord do not indicate that the rental unit was not reasonably clean.

The photographs of the carpet reflect the leak that appears to have been caused by the skylight, which has left a line of staining on the carpet. Unless there is evidence of some sort of damage caused by the tenants, repair of a skylight would normally be considered a maintenance issue and not the responsibility of the tenants. Therefore, I find that any leak from the skylight is the responsibility of the landlord and dismiss the claim for carpet cleaning.

In the absence of verification of costs incurred for curtains or repair of the dents, I find that portion of the claim is dismissed. Further, the dents to the appliances appear to have been the result of wear and tear and do not affect the operation of the appliances.

	Claimed	Accepted	Agreed
2 days over holding	140.00	138.08	
Painting	450.00		450.00
Fence replacement	1,320.00	660.00	
Power wash yard	180.00	0	
Cleaning and carpet cleaning	560.00	0	
Replace curtains	200.00	0	
Repair dent in fridge and stove	150.00	0	
TOTAL	3,150.00	660.00	600.00

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,260.00. The balance of the claim is dismissed.

The landlord is holding a deposit in the sum of \$150.00 for a remote control device. Payment of deposits, beyond the allowable security and pet deposits; which may each be up to one half of one month's rent, is a breach of the Act. Therefore, pursuant to section 62(3) of the Act, I Order the landlord to return the balance in the sum of \$150.00.

The landlord is holding security and pet deposits in the sum of \$2,100.00. Therefore, the landlord will retain \$1,260.00 of the deposits, pursuant to section 72(2) of the Act, and I order the balance in the sum of \$840.00 to be returned to the tenants, forthwith. I have issued the tenants a monetary order in the sum of \$840.00, plus \$150.00 for the remote control deposit.

### Conclusion

I find that the landlord has established a monetary claim in the amount of \$1,260.00, which is comprised of compensation for damage to the unit.

The landlord will be retaining the tenant's security deposit and part of the pet deposit, in the amount of \$1,260.00 in satisfaction of the monetary claim.

The balance of the landlord's claim is dismissed.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposits in the sum of \$990.00. 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: June 14, 2011.

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Residential Tenancy Branch