



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents by registered mail on February 21, 2011, the tenant did not attend.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### **Background and Evidence**

This month-to-month tenancy began on June 15, 2010 and the landlord collected a pro-rated amount of rent for that month. Rent in the amount of \$1,050.00 per month was payable in advance on the 1<sup>st</sup> day of each month in addition to 2/3 of the monthly gas bill; the tenant in the lower level was required to pay the other third. On June 5, 2010 the landlord also collected a security deposit from the tenant in the amount of \$525.00.

The landlord testified that the tenant gave her written notice on December 10, 2010 to vacate the unit on January 15, 2011. The tenant actually vacated the rental unit on January 2, 2011 and left a note and the keys for the rental unit in the landlord's mailbox. The tenant had paid the rent for that month in 2 instalments of \$525.00 each by personal cheque. Then the tenant put a stop payment on the 2<sup>nd</sup> cheque that she issued. The landlord claims \$525.00 for unpaid rent and states that the tenant abandoned the rental unit by leaving prior to the end of the tenancy, and by not advising the landlord that she was leaving early.

The landlord further testified that she attempted to contact the tenant at work, and was able to get a message to her to call. The tenant did call the landlord and told her that she stopped the payment on the cheque to protect her security deposit. When asked about conducting an inspection of the unit, the tenant stated that she and her friend had already inspected the unit and she would not be returning. The landlord requested an address so she could provide the final gas bill, but tenant told the landlord not to contact her anymore and refused to provide a forwarding address. A copy of the tenancy agreement and the gas bill were also provided in advance of the hearing, and the tenancy agreement states that the tenant is to pay 2/3 of the bill. The bill covers the period from December 17, 2010 to January 19, 2011 for \$281.28. The landlord stated that 2/3 of that bill is \$185.65, and pro-rated for the time the tenant was actually in the rental unit is \$95.81.

The landlord conducted the move-out condition inspection report on January 9, 2011 without the tenant present. She stated that after the tenant moved, the landlord had to wash cupboards, windows, window frames, light fixtures, hand-marks around light switches, a bathtub, the ensuite and the laundry room. The landlord was also required to vacuum the drapes and clean the carpets. She stated that she had to spend about 3 hours cleaning the rental unit. A copy of the move-out condition inspection report was also provided in advance of the hearing which supports that evidence.

When questioned about a move-in condition inspection, the landlord responded that she and the tenant went through each room of the house, and the landlord gave the tenant a move-in condition inspection report to complete, sign and return. A copy of that report was provided in advance of the hearing, and it has not been completed. The landlord stated that there were no issues to put on the report, meaning that everything was in good working order and clean, and the tenant signed the report.

The landlord further testified that the tenancy agreement provides for \$75.00 for a late fee for each month that rent is late, as well as \$50.00 for N.S.F. fees. The landlord claims both of those amounts for the cheque the tenant had stopped payment on. She stated that her bank charged her \$50.00 for the stop payment, and the N.S.F. fee

should apply, although no evidence of the bank charging the landlord \$50.00 was provided.

The landlord claims \$525.00 in unpaid rent, \$95.81 for the outstanding gas bill, \$610.00 for cleaning the rental unit, \$75.00 for a late fee, \$50.00 for the stop-payment, and \$50.00 for recovery of the filing fee for the cost of this application.

### **Analysis**

The *Residential Tenancy Act* states that a landlord and tenant must together inspect a rental unit prior to a tenant occupying the unit and again at the end of the tenancy. The regulations go into significant detail about how those inspection reports must be completed, and the *Act* states that the onus is on the landlord to provide the tenant with at least 2 opportunities to conduct the inspection unless the tenant has abandoned the rental unit. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In the evidence before me, I find that the tenant gave notice to leave the unit on January 15, 2011 but left the unit on January 2, 2011 without notifying the landlord and without providing a forwarding address, thereby abandoning the rental unit.

I have reviewed the move-in/out condition inspection reports, and I find that the landlord's claim of \$610.00 for cleaning the rental unit is excessive. The landlord stated that she spent 3 hours cleaning, and I find that \$25.00 per hour is reasonable in the circumstances. I cannot be satisfied in the evidence before me what condition the rental unit was at the outset of the tenancy. I accept the evidence of the landlord that no markings beside each room of the house means there were no issues to report, however, the landlord used a method that is not sanctioned by the *Act*. The landlord has the duty and obligation to complete the move-in condition inspection report, have the tenant sign it and then provide the tenant with a copy of it.

I also refer the landlord to the Residential Tenancy Policy Guidelines, and Guideline #1 in particular. The Guideline is intended to provide information to landlords and tenants about what their responsibilities are. I also encourage the landlord to review Guideline #37. Although that Guideline is intended to explain rental increases, which is not applicable to this case, it may assist the landlord in future tenancies with respect to the useful life of such things as paint, appliances, carpet, etc.

I accept the landlord's testimony that the tenant stopped payment on the last rent cheque, and the landlord is entitled to a monetary order in the amount of \$525.00 as well as the late fee of \$75.00 as set out in the tenancy agreement. I find, however, that the landlord has failed to establish that she is entitled to the \$50.00 stop payment fee.

No evidence is before me to support that claim, and I find that an N.S.F. fee and a stop payment fee are not the same and it is therefore not included in the tenancy agreement.

I further find that the landlord has established a claim for \$95.81 in unpaid utilities.

In summary, I find that the landlord has established a claim for \$525.00 in unpaid rent, \$75.00 for cleaning, \$95.81 for an outstanding utility bill, \$75.00 for a late payment fee of the rent for the month of January, and \$50.00 for recovery of the filing fee.

### **Conclusion**

For the reasons set out above, I order that the landlord keep the security deposit in the amount of \$525.00, and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$295.81. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: May 09, 2011.

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Residential Tenancy Branch