



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application requesting compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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.

### **Preliminary Matter**

Both parties had copies of a move-in condition inspection report; a copy was not submitted as evidence. I requested that each party submit a copy to the Residential Tenancy Branch by 9 a.m. on September 26, 2011. The landlord submitted a copy of the report reflecting both a move-in and the July 31, 2011, move-out; the tenant's copy included only the move-in portion of the report.

The tenants stated that they received the landlord's evidence 2 days ago; this evidence was submitted late to the Residential Tenancy Branch. The tenants were able to review this evidence and were prepared to respond to the submission; therefore, this evidence was accepted.

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

Are the tenants entitled compensation for loss of value of the rental unit for a period of 27 days, in the sum of \$1,219.59?

Are the tenants entitled to compensation for cleaning costs in the sum of \$180.00?

Are the tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on May 2, 2011; the tenant planned on moving in their possessions on May 13, 2011. The move-in condition inspection report indicated that cleaning was required.

The tenants made repeated calls to the landlord during the first several weeks of May, requesting cleaning be completed. On occasion the tenants would go to the unit to see if it had been cleaned and on May 13, 2011, a letter was sent to the landlord, a copy of which was supplied as evidence, indicating that some belongings had been moved in on May 12, when they discovered the unit continued to require cleaning.

The tenants were to move in on May 13, but when she entered the unit it had yet to be cleaned. At this time the tenants pulled the stove and dryer from the walls and discovered the need for cleaning along the side of the stove and on the floors. The tenants removed the top of the stove elements which revealed the need for cleaning.

The tenants spent 9 hours cleaning on May 14 which then resulted in a delay in their ability to move into the unit. They cleaned the kitchen, 2 bathrooms, the laundry room and washed all of the walls and windows. The tenants were then not able take time to move until May 28, 2011.

The tenant submitted photographs of the side of the stove, the area beneath the stove elements, the floor underneath the stove and clothes dryer and a dirty pail of water.

A copy of the move-in condition inspection report, submitted as evidence upon my request, indicated that the followings areas were dirty:

- Kitchen closet
- Stairwell walls and trim
- Bathtub
- Windows in the bedrooms, dining room, living room and kitchen

The move- in report indicated that there were some marks on areas of wall, nail holes and some minor repairs were required.

The landlord submitted a copy of the move-out condition inspection completed in the tenant's unit on April 30, 2011; 2 days prior to the move-in report condition inspection

completed with the tenants. The previous occupant's move-out report indicated that the unit had been left in a very clean condition.

The landlord's maintenance person testified that his spouse went into the unit on May 2, 2011, and cleaned for 2 hours. She told her husband she did not understand why she had been asked to clean, as the unit was not in the need of additional cleaning.

The landlord submitted that the tenants were in possession of another residence and were claiming return of rent, as they were not in need of the rental unit during the month of May. The tenants did not respond to this submission.

The tenants have claimed loss of value equivalent to full rent paid for a period of 27 days; from May 1, to 27, 2011, inclusive. The tenants claimed the cost of cleaning for 9 hours at \$20.00 per hour.

### 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.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenants.

The tenants have submitted a claim for a complete loss of value of the tenancy for a period of 27 days. I have considered the move-out condition inspection report completed on April 30, 2011, and the move-in condition inspection report completed on May 2, 2011. These reports differ to such a degree that I cannot place weight on either as it is not clear one report, over the other, has provided a reliable reflection of the state the rental unit, they are so contradictory. The move-out report from the previous occupant indicated the unit was in very clean condition; the move-in report completed several days later with the tenants indicated the unit required some cleaning.

I have then considered the tenant's submission that the unit was in such a poor state that they could not move in. I find, on the balance of probabilities and from the evidence before me that the unit was habitable and that the tenants were not barred from possession the unit. There was no evidence before me that the unit was in a state that

rendered it unfit for use. The tenant's have the burden of proving the claim for loss of use and I find that they have failed to support their claim.

The photographs submitted as evidence were of areas that only became visible once the tenants moved appliances and dismantled the stove-top. If the tenants had exposed these areas at the start of the tenancy and left them visible for the landlord, it would be reasonable to accept that the landlord should clean them. The tenants did not provide photographs of any other area of the rental unit that was dirty or in need of cleaning.

The tenants have calculated the amount they believe they are entitled to for cleaning. However, in the absence of any verification of time spent, I have accepted that some cleaning was required and find they are entitled to nominal damages in the sum of \$20.00.

As the tenant's application has some merit I find they are entitled to filing fee costs.

### Conclusion

I find that the tenants have established a monetary claim, in the amount of \$70.00, which is comprised of \$20.00 in nominal damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$70.00. 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.

The balance of the tenant's claim is dismissed.

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: September 26, 2011.

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Residential Tenancy Branch