



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for a monetary order for damages, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenants is for a monetary order for the cost of emergency repairs, money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

Matters related to this tenancy were originally set for July 22, 2011 however both parties agreed at that time to adjourn the hearing in order to allow the landlord's and tenant's claims to scheduled and heard together.

This tenancy began November 1, 2008 with monthly rent of \$2000.00 and the tenants paid a security deposit of \$625.00. The tenancy ended March 31, 2011.

The landlord testified that during the tenancy the tenant erected a storage shed and when he installed the shed the tenant dug up and removed a section of asphalt. The landlord stated that they found that floor tiles in the basement laundry area had been damaged and had to be replaced, the tenant had painted 2 downstairs rooms very poorly and in unacceptable colors and a light bracket was missing at the basement

The landlord stated that the tenant was constantly doing repairs on the property without the landlords consent and then would request deductions off the monthly rent.

The tenant stated that there were cracked tiles in the basement kitchen but that the laundry room, which is a common area, has a concrete floor. The tenant said that there

were pieces of broken asphalt, dirt and trash in the area where he put the shed and that as the asphalt was in such bad condition, he removed the chunks to make a level spot for his shed.

The tenant maintained that the piled up wood that the landlord wants to charge dump fees for belongs to the upstairs tenant and that he has since removed any items, including the swing set, that had been left behind at the end of the tenancy.

The tenant stated that as far as the painting in the downstairs bedroom was concerned, these rooms had not been painted since 2007 prior to the start of the previous tenant's tenancy.

The landlord testified that a move in inspection report was completed by the previous management company and that the move-out inspection report was lacking detail as he did not want to have a confrontation with the tenant.

The landlord in this application is seeking \$2000.00 compensation for the following;

Ceramic tile repair	\$224.00
Paving	\$1064.00
Garbage removal	\$200.00
Washer & Dryer left outside	\$0.00
Repainting of 2 bd unit	\$380.80
<b>Total Claim</b>	<b>\$1918.00</b>

The tenant testified that during the tenancy he had completed numerous repairs on the residence and the tenants are requesting reimbursement for the cost of these repairs that date back to 2007.

The tenants in this application are seeking \$1307.82 compensation for the following;

Loss of storage area	\$150.00
2 broken lights replaced in basement	\$70.00
Replacement of 2 blinds	\$50.00
Hot water leak	\$184.66
Broken tiles replaced	\$30.00
Paint to repair from leaks	\$85.72
Furnace filter	\$22.40
HWT exhaust	\$6.43
Window repair and delay in repair	\$100.00
Picking up nails	\$20.00
Spoiled food in unplugged freezer	\$100.00

Garbage disposal and gas for 2 trips	\$200.00
Heat loss from open door 09/10	\$160.00
Vacuum filters for cleaning up rodent feces	\$40.00
<b>Total Claim</b>	<b>\$1307.82</b>

The tenant did acknowledge that the landlord had reimbursed him in \$628.66 in January 2009 for a number of repairs that he had completed and that he typically did not get prior authorization from the landlord to complete repairs on the property.

In closing the landlord stated that if the tenant had not 'nickel and dimed' the landlord during the tenancy the claim perhaps would have been different. The tenant responded by stating that he had filed his claim in retaliation to the landlord's claim and because he wanted his damage deposit back.

### Analysis

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for damages.

The move-in inspection report reflects a number of significant issues with the rental unit and the move-out inspection report has no information in regards to damages inside or outside the rental unit. The move-in inspection report reflects broken tiles and a broken light however these are not noted on the move-out and it is unreasonable to now assign blame to the tenant for these items. It is also not reasonable to believe that the tenant dug up a flat, solid surface for installation of the shed as that surface would have been preferable to dirt for installation of the shed.

I am also not satisfied that all of the discarded wood in the yard was left by this tenant alone as there are additional tenants residing on the property. As the paint in the downstairs bedroom is 4 years old and Residential Tenancy Policy Guideline 37 *Rent Increases* lists the useful life of interior paint to be 4 years, the cost of repainting the area in question would fall to the landlord.

I hereby dismiss the landlord's application without leave to reapply.

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for damages.

The work done by the tenant during the tenancy was not done with the landlord's written consent although the landlord during the tenancy did reimburse the tenant \$628.66 for a number of repairs that the tenant had completed. The tenant has also not provided any

receipts for the repairs that were completed or materials bought. The tenant has also not provided any evidence of loss.

I hereby dismiss the tenant's application without leave to reapply.

Residential Tenancy Policy Guideline **5. speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.*

As neither party has been successful in their application, neither party is entitled to recovery of the \$50.00 filing fee.

The \$625.00 security deposit is to be returned to the tenants.

### Conclusion

The landlord's application has been dismissed in its entirety without leave to reapply.

The tenant's application has been dismissed in its entirety without leave to reapply.

I grant the tenants a monetary order for return of the \$625.00 security deposit under section 67 of the *Act*. If the amount is not paid by the landlord, 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: September 12, 2011.

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Residential Tenancy Branch