



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB MND MNSD FF  
                             MNSD O FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for breach of an agreement and a Monetary Order for damage to the unit, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit, for other reasons, and to recover the cost of the filing fee from the Landlord.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of hearing documents and evidence provided by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Was damage caused to the rental unit during the course of the Tenant's tenancy?
2. If so, has the Landlord met the burden of proof to be awarded monetary compensation as a result of those damages?
3. What is the disposition of the security deposit in accordance with the *Residential Tenancy Act*?

### Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on June 1, 2010 and was set to switch to a month to month tenancy after June 1, 2011. Rent was payable on the first of each month in the amount of \$2,200.00 and on June 1, 2010 the Tenant paid \$2,200.00 as the security deposit. No move in or move out inspection reports were completed. The tenancy ended April 30,

2011 and the Landlord found new tenants that were scheduled to take possession May 1, 2011.

The Tenant affirmed that on May 16, 2011, he sent the Landlord his request for the return of his security deposit and his forwarding address, in writing, via registered mail to the service address listed on the tenancy agreement. He provided in his evidence a copy of the Landlord's response to his registered letter, dated May 19, 2011 that was sent regular mail to his forwarding address.

Both the Landlord and her Agent stated they did not receive the Tenant's forwarding address until they received his e-mail of June 6, 2011. Neither could explain how they were able to file their application for dispute resolution May 27, 2011, listing the Tenant's forwarding address.

The Agent advised that their initial application was based on estimated amounts to repair the unit. They have included the actual receipts, for most items, since making their claim. They advised the rental unit was a new home that they took possession of in late 2008. They began renting the unit from the beginning of their ownership and had one tenancy which ended approximately one month prior to this Tenant taking occupancy. They state the unit was completely repainted prior to this Tenant taking occupancy however they did not provide evidence to support this. The Tenant was supposed to be out of the unit by 3:00 p.m. on April 30, 2011. The Tenant called them at midnight to say his movers did not show up on time so he was still moving. They state the unit was left at the end of this tenancy without being cleaned and with damage that required the entire unit to be repainted. Photos were provided of the rental unit in their evidence. They are seeking the following as damages:

- A) \$1,848.00 to repair holes in the walls, mouldings, replacement of door and frame, lock replacement, and removal of debris left in the rental unit. This work was completed May 1 and 2, 2011.
- B) \$167.00 to have the rental unit cleaned. They provided an invoice that was for carpet cleaning and home cleaning of 5 hours. They were not claiming the cost of carpet cleaning because they agreed with the Tenant that because of the condition of the carpet at the beginning he would not have to pay for carpet cleaning at the end of this tenancy. This work was performed May 1, 2011.
- C) \$300.00 for the cost to replace two bathroom mirrors that were scratched. The replacement mirrors were purchased second hand so no invoice was provided.
- D) \$73.00 for overholding charges because the unit was returned late. They had agreed that the Tenant would be out of the unit by 3:00 p.m. however he was still in the unit at midnight. They instructed the Tenant to leave the key inside and

when they returned at 7:00 a.m. on May 1, 2011 he was completely moved out and the key was left inside.

- E) \$75.00 for the cost to repair the washing machine door. They did not submit a receipt for this expense and stated that the door had to be reinstalled or adjusted so they paid a labourer cash to complete this repair.
- F) \$200.00 for the cost to put their new tenants up in a hotel because the unit was not ready for them to move in on May 1, 2011. Their cleaners were supposed to be there on April 30, 2011 at 3:00 p.m. however they could not gain access because the Tenant was still moving.

The Tenant advised that when he first took possession of the unit he pointed out a lot of damage to the Agent. He noted how the walls were damaged and how someone very sloppily painted over the damage getting paint on mirrors, light fixtures, and everywhere. He admits to putting holes in the walls so he could hang his pictures; however he put putty in them and sanded them as supported by the Landlord's photos. He also pointed out to the Agent the existing damage to the mirrors and how dirty the floors were. He repaired several items that were broken at the beginning of his tenancy such as the broken cupboard and he was able to remove most of the marks off of the mirrors. The washing machine damage was the face plate on the door and that was like that at the beginning which he was able to rig to get through his tenancy.

The Tenant confirmed his move was delayed and that it was the Agent who told him that their new tenants arrived to town late and she was putting them up in a hotel at no cost to him. He said that is why he worked until the late hour cleaning as supported by his witness statements.

The Tenant is seeking the return of double his security deposit because it was not returned within fifteen days from the end of his tenancy. He is also seeking \$50.00 for the cost of track lighting that he installed in the living room.

The Agent stated that she did not agree to pay the Tenant for the track lighting and in fact he asked him to remove the lighting but he refused to do so.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the

*Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

### **Landlord's Application**

The Tenant has vacated the unit and the Landlord has regained possession of the rental unit; therefore, there is no need to consider her request for an Order of Possession.

Part 3, Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy. Accordingly, in the absence of a move in inspection report the only evidence before me pertaining to the condition of the rental unit at the outset of the tenancy was verbal testimony and I find the disputed verbal testimony insufficient to meet their burden of proof. Therefore I dismiss the Landlord's claim for damages (wall and door repairs, painting, cleaning, washing machine repair, and mirror replacements).

Furthermore there is no evidence that the Landlord suffered a loss due to the Tenant remaining in the rental for the remainder of April 30, 2011, a day that he paid rent to occupy the unit. Accordingly, I dismiss the Landlord's claim for overholding charges and hotel costs.

The Landlord has not been successful with her application; therefore I decline to award recovery of her filing fee.

### **Tenant's application**

The Tenant has sought \$50.00 for the cost for track lighting he installed in the rental unit. There is no evidence before me to prove the Tenant had the Landlord's permission to install the light or that the Landlord agreed to pay for it. In the presence of disputed verbal testimony I find the Tenant has not met the burden of proof for this claim; therefore I dismiss his claim for reimbursement of the light fixture.

I accept the Tenant's verbal testimony that he sent the Landlord his forwarding address, in writing on May 16, 2011 via registered mail as supported by his additional evidence that the Landlord responded to his letter when she wrote him a reply on May 19, 2011. In addition, the Landlord filed her application for dispute resolution on May 27, 2011, listing his forwarding address as his service address. Based on a balance of probabilities I find the Landlord received the Tenant's forwarding address, in writing, on May 19, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 3, 2011. The Landlord's application was filed May 27, 2011.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and that the Landlord is not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Having dismissed the Landlord's application above, the Landlord has no entitlement to retain the security deposit. Therefore I hereby Order the Landlord to return the Tenant's security deposit of **\$2,200.00** plus interest of \$0.00, forthwith.

I find the Tenant's application had some merit; however in recognition of the limited success I award the Tenant **\$25.00** of the filing fee he paid for this application.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application.

The Tenant's decision will be accompanied by a Monetary Order for **\$2,225.00** (\$2,200.00 + 25.00). This Order is legally binding and must be served upon the Landlord.

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 07, 2011.

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Residential Tenancy Branch