



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNSD, MNDC, 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 property, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenants 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.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$4,035.77?

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on March 1, 2009; rent was \$1,300.00 per month, due on the first day of each month. A deposit in the sum of \$575.00 was paid on February 9, 2009.

The tenants vacated on June 30, 2011; the move-out condition inspection report was completed, by agreement, on July 4, 2011. A copy of the move-in and move-out report was submitted as evidence. The landlord submitted 56 photographs of the rental unit.

The tenants lived in a rental unit on an upper floor of the home; the landlord lived in the lower unit of the home.

The landlord has made the following claim:

Flooring	2,656.18
Screen door	194.99
Screen window	25.98
Drywall compound	6.49
Tub wall	149.94
Tub adhesive	9.97
Vinyl floor	99.00
Latex primer	14.99
Latex paint	99.99
Caulk	2.39
HST	72.45
Cleaning:	
Washer and dryer	12.50
Light fixture	50.00
Window	6.25
<b>TOTAL</b>	<b>4,197.15</b>

The tenants confirmed that a wall was partially painted at the end of the tenancy; that their cat caused some damage; that the screens were damaged and that drywall patches were not fully repaired at the end of the tenancy. The tenants also agreed during the hearing that some cleaning was required to the washing machine and light fixtures.

The landlord submitted copies of Home Hardware items, taken from the internet, showing costs for items claimed. An estimate for labour was provided and the landlord submitted a cleaning cost claim for work she completed.

The home is approximately 25 years old; the unit was last painted 3 months prior to the start of the tenancy; although this was disputed by the tenants. The screen door was at least 5 years old, the carpets in the hallway and living room were newly installed 4 months prior to the start of the tenancy. The carpeting in the other rooms was approximately 10 years old.

A photograph of the screen door showed an area where paint had peeled away; it appeared something had spilled on the wood door, the frame and metal door. The landlord stated that whatever was spilled on the door caused the paint to peel off. The door also had several dents. The move-in inspection report indicated that the door has some scratches. The tenant stated that they did not spill anything on the door or cause the paint to peel. The tenant testified that the dents were easily caused if you bumped into the door.

The landlord supplied an estimate to have new carpeting installed in the living room, hallway, master bedroom, bedroom #2 and #3. The tenants admitted to some staining in the carpets; they had the carpets cleaned at the end of the tenancy. The landlord provided photographs that showed the carpet appearing dirty and with some small stains. The landlord has since had the carpeting replaced in the whole unit at a cost of \$4,000.00; confirmation of the expenditure was not supplied as evidence.

The landlord supplied a photograph of a hole in the side of the tub surround of the tenant's tub. The landlord is claiming costs to replace the flooring in the lower level unit bathroom as a result of water that flowed from the tenant's upper bathroom; causing damage below. The landlord lived in the lower unit; photographs showed considerable lifting of the floor around the bathtub. The landlord stated the tenant never reported the tub surround hole and that their negligence caused damage to the landlord's property. The landlord has claimed labour costs for repairs required to the home.

An estimate for labour in the sum of \$700.00 for 28 hours of work at \$25.00 per hour was submitted. The July 2011 estimate indicated costs for the downstairs bathroom, wall repairs, floor removal and upper floor repairs such as sanding, priming, painting, repair to the door and screens. The estimate referenced 20 hours of work required to the upper unit.

The tenant's stated that they reported the tub surround hole at the start of the tenancy and that the landlord never investigated the problem. The landlord had been in the tenant's unit to unplug a toilet and to caulk, but had not made any efforts to locate the site of a leak. The landlord denied they had not looked for the source of the leak and stated she had cleaned the tub at the start of the tenancy and would have noticed the hole in the surround. The landlord does not believe that the surround was an original fixture, but did not know the age of the surround.

### 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.

The tenant has acknowledged damage to the window screen, cleaning required to specific areas of the home and the drywall patching and painting of a wall that were not properly repaired or completed. Therefore, based on the tenant's acknowledgement and on the balance of probabilities, I find that the landlord is entitled to compensation in the sum of \$109.15 for these costs.

In relation to the screen door, I find, on the balance of probabilities, that the door was damaged by some sort of spill that affected both the outer exterior door and the outer screen door. I have based this decision on the testimony of the parties and the photographic evidence which showed the door to have been damaged and the inside of the exterior door marked in a corresponding manner. Based on the evidence before me I find, on the balance of probabilities, that the tenants did cause this damage. However, I find that the door is not damaged to the point where replacement is required and have provided the landlord a nominal amount in recognition of repair, such as painting, that would be required.

Residential Tenancy Branch Policy suggests that carpet has a useful lifespan of 10 years; I find this a reasonable stance. The carpets in the bedrooms were more than 10 years old; therefore, the claim for replacement of those carpets is dismissed, as they were beyond their useful lifespan.

The hallway carpeting and living room carpeting was dirty and has some staining. The tenant had the carpets cleaned, but they remained soiled. The landlord did not obtain any professional advice in relation to further cleaning of these areas, which had carpet that was less than 3 years old. The landlord did not supply any verification of replacement costs, only a quote for the whole upper area of the home. I find, in the absence of any effort to further clean the carpets, any notation of excessively dirty carpets on the move-out condition inspection report and, in the absence of verification of the cost of replacement that the claim for carpets is dismissed.

Based on the photographs and move-out condition inspection report, I find that the landlord is entitled to window cleaning costs.

There is no evidence before me of the age of the tub surround that would allow me to estimate the useful life of that fixture. I find, from the photographic evidence that the surround was aged. The move-in condition inspection report did not reference any problem with the tub surround; however, there is also no evidence before me that the landlord properly investigated what I find to have been a leak that occurred over a period of time into the lower bathroom. In the absence of evidence that the landlord took steps to fully investigate the source of the water leak, I find that the tenants are not responsible for the damage caused in the lower bathroom. At the first signs of a leak I would expect the landlord to have fully checked the tenant's bathroom for a source of that leak. There was no evidence before me that this occurred. Therefore, I find that the claim for new flooring and repair in the basement is dismissed.

I dismiss the claim for a new tub surround as the age of the surround is unknown. It appears that the surround is aged.

Based on the acknowledgment of the tenant and the evidence before me I find that the landlord is entitled to labour costs in the sum of \$200.00 for the painting and wall repairs.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Repair labour	700.00	200.00
Screen door	194.99	50.00
Screen window	25.98	25.98
Drywall compound	6.49	6.49
Tub wall	149.94	0

Tub adhesive	9.97	0
Vinyl floor	99.00	0
Latex primer	14.99	14.99
Latex paint	99.99	99.99
Caulk	2.39	0
HST	72.45	11.69
Cleaning:		
Washer and dryer	12.50	12.50
Light fixture	50.00	50.00
Window	6.25	6.25
<b>TOTAL</b>	<b>4,197.15</b>	<b>477.89</b>

I find that the landlord's application has merit, and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$527.89, in satisfaction of the monetary claim. Therefore, the tenants are entitled to the balance of the deposit in the sum of \$47.11.

#### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$527.89, which is comprised of \$477.89 in compensation and the \$50.00 filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$527.89, in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposit in the sum of \$47.11. 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: October 18, 2011.

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Residential Tenancy Branch