



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNR, MNDC, FF

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent or utilities pursuant to section 67;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail. The tenant confirmed that he received the landlord's package delivered by registered mail on July 28, 2011. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on July 29, 2011. The landlord confirmed that by the time she returned to her home address, the tenant's dispute resolution hearing package had been returned to the tenant by Canada Post. The landlord confirmed that the tenant's package was sent to her correct mailing address. She also said that she did receive a copy of the tenant's application by email a few days before this hearing. I am satisfied that the hearing packages were served by the parties in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or utilities? Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Which of

the parties is entitled to obtain or retain all or a portion of the tenant's security deposit? Are either of the parties entitled to recover their filing fees for their applications from the other party?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters, reports and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This tenancy commenced on March 1, 2007 as a six-month fixed term tenancy. After the expiration of the first term of this tenancy, subsequent arrangements were made by email and oral agreements whereby the tenancy continued. The initial monthly rent was set at \$1,500.00 for this furnished house and grounds, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,500.00 security deposit.

By July 1, 2010, the landlord had agreed to alternate rental arrangements. In the most recent 12-month period of this tenancy, the landlord agreed to waive rent for July and August 2010 and reduce the monthly rental by \$200.00. The landlord said that she agreed to these rent reductions in exchange for the tenant's commitment to maintain the grounds of the property, and conduct and complete repairs to the deck, fences and painting.

The tenant confirmed that there was an oral agreement to reduce his rent in the amounts stated by the landlord. However, he testified that this reduction was to take into account his lack of need for the rental property in July and August 2010, when the landlord had plans to visit and use the property herself. He said that the ongoing \$200.00 rent reductions were in exchange for work he had already conducted on the property and his agreement to undertake maintenance work on the property. At one point, he also confirmed that he had been intending to work on one of the decks on the property, but poor weather in the winter and spring of 2011 prevented him from doing so. He said that the landlord advised him in early April 2011 when he would not sign a new tenancy agreement beyond June 30, 2011, that she would have the deck professionally repaired. He testified that he and his co-habitant discontinued most work on the rental property after it became clear that they would not be living there after June 30, 2011. The tenant said that he moved out of the rental property on June 30, 2011 and removed a few belongings stored in the shed by July 2, 2011.

The landlord applied for a monetary award of \$7,957.77. This amount included \$750.57 in unpaid utilities that the landlord said covered the period of the tenancy that pre-dated

December 31, 2008. After that date, the tenant paid utilities directly. The landlord also submitted a copy of a June 27, 2011 receipt for \$137.20 to clear the drains of hair and food. The only other invoice provided by the landlord was for \$4,504.40 in repairs dated July 8, 2011. The only items identified in this invoice were for \$3,400.00 in accordance with the landlord's "Original Contract", \$275.00 in "Extras" and \$357.50 for the "Contractor." No other details were provided on this invoice. The landlord also entered into written evidence a list of items that were either damaged or missing when she inspected the premises on July 2, 2011. She provided no bills, invoices or photographs to support any of her claim for these items.

The landlord's written evidence identified the following items in her claim for a monetary award:

<b>Item</b>	<b>Amount</b>
Missing and Damaged Items	\$1,220.00
Tenant Damage	350.00
Utilities Owing	750.57
Drain Cleaning	137.20
Abatement of Rent Since Work was not Completed by Tenant	5,500.00
Less Security Deposit	-1,500.00
<b>Total of Above Items</b>	<b>\$6,457.77</b>

At the hearing, the landlord explained that in the absence of receipts and invoices for many of the items identified in her application, she would be satisfied with a monetary award to compensate her for the two months of rent that she agreed to forego for July 2010 and August 2010 (\$3,000.00) and a recovery of 10 months of rent reduction at \$200.00 per month (\$2,000.00). This would result in a monetary award of \$5,000.00.

The parties agreed that they conducted a joint move-in condition inspection on February 18, 2007, twelve days before the tenant took possession of this rental unit. The landlord entered into written evidence a copy of the joint move-in condition inspection report.

The landlord said that a property management company she had retained tried to schedule a joint move-out condition inspection for June 30, 2011. The landlord testified that the tenant advised the property management firm that he could not have everything removed from the premises by the scheduled time of the inspection. She said that the property management company could not delay the inspection until the evening when the tenant would have his belongings removed. The landlord said that she conducted her own move-out condition inspection on July 2, 2011 without the tenant. The tenant

said that neither the landlord nor her property manager sent any written request to conduct a joint move-out condition inspection. The landlord did not dispute the tenant's testimony in this regard and confirmed that she sent no written request to the tenant to meet with her on July 2, 2011 to conduct the move-out inspection. The landlord entered into written evidence a copy of her move-out condition inspection report which identified many features of the tenancy which were not left in a clean condition.

The parties agreed that the tenant provided his forwarding address in writing to the landlord on July 5, 2011.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of February 18, 2007, although it was conducted 12 days before the tenancy commenced, did show that most if not all parts of the rental unit were in good condition at that time. However, no joint move-out condition inspection was conducted, and the parties agreed that the landlord and her representatives did not make two written requests to schedule a joint move-out condition inspection with the tenant.

Sections 35 and 36 of the *Act* establish the rules whereby joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

### ***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, ...*

I find that the landlord did not provide two opportunities for inspection of the rental premises and proceeded to inspect the premises without trying to arrange an inspection in accordance with section 36(2)(a) of the *Act*. Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

In reviewing the landlord's claim, I find little evidence to link the few expenses where the landlord did provide invoices or receipts to the landlord's assertion that the expenses were incurred as a result of the tenant's actions. For example, the landlord's only evidence regarding her claim for unpaid utilities was her own summary of a table dating from February 18, 2007 to December 31, 2008. She provided no bills from BC Hydro, the Regional District or the waste removal service, the apparent sources for her summarized table. I dismiss the landlord's application for recovery of unpaid utility bills due to the lack of detail regarding this part of her claim and the lack of timeliness of her application for this item. Similarly, I dismiss the landlord's claim for recovery of \$4,504.40 paid to her property manager due to the lack of detail regarding this expenditure and any direct linkage to the tenant's actions.

I allow the landlord's claim for \$137.20 to obtain plumbing repairs to unclog the drain in the rental property. I do so because the invoice provided by the plumbing company that completed this work on June 27, 2011 did reference that the blockage was "due to hair and food over the years in pipe."

I have carefully considered the landlord's oral testimony that she is entitled to recovery of rent from July and August 2010 and a reduction in rent of \$250.00 per month over the following ten months of this tenancy.

There is conflicting testimony between the parties as to the reason that the landlord agreed to forego receiving rent for July and August 2010. The landlord said that this was in exchange for the tenant's agreement to conduct repairs and maintenance work on the property. The tenant denied the landlord's account of why this allowance was provided, noting that he was planning to move if he had been required to pay rent over those months when he was staying in another location. The landlord did not dispute the

tenant's claim that she actually resided in this furnished rental home for part of August 2011. There are also different accounts from the parties as to the terms of their oral agreement to allow the tenant to reduce his rent by \$250.00 per month from September 2010 until June 2011. The landlord said that she agreed to this rent reduction in exchange for the tenant's commitment to maintain the property and conduct specific repairs and painting that he failed to do by the end of this tenancy. The tenant testified that the rent reduction was for his ongoing maintenance of the property and for specific work, much of which was already done by the time the landlord agreed to this rent reduction.

Under these types of circumstances, a written agreement is much preferred to varying interpretations of an oral agreement between the parties. The landlord was the party who gave up a portion of rent that she was otherwise entitled to receive from the tenant as per their original residential tenancy agreement. Since the landlord agreed to a considerable reduction in the overall rent owing for the final 12-month period of this tenancy, I would expect that the landlord would be careful to put into writing any responsibilities that were required in exchange for the rent reduction.

In the absence of any written conditions for the rent reduction, the interpretation of the extent to which the tenant complied with the terms of their oral agreement to extend this tenancy is very difficult to ascertain. The tenant did agree that he was supposed to "look after" the rental property for the landlord and take care of grounds and maintenance. By his own admission, his efforts and those of his co-habitant reduced in April 2011 once he was no longer planning to continue this tenancy. He also admitted that he did not get to some of the tasks, particularly a deck repair job, that he had committed to conduct for the landlord.

I find little evidence to support the landlord's claim for recovery of the rent that she agreed to forego for July and August 2010. Based on a balance of probabilities, it appears to me that the landlord's agreement to forego the initial two months of rent for the extension of this tenancy was instrumental in the tenant's decision to remain in this tenancy until June 30, 2011. I find no basis to issue a monetary award to the landlord to recover rent for these two months.

I find that there is some evidence to support the landlord's claim that the tenant did not fulfill the commitments he undertook when the landlord agreed to reduce his rent by \$250.00 for the final ten months of this tenancy. I find that by April 2011, the tenant was not providing the full range of services to maintain and repair the rental property. For these reasons, I allow the landlord a monetary award of \$50.00 for the tenant's failure to abide by the terms of his agreement with the landlord for each of the seven months from

September 2010 until March 2011. For the three-month period from April 2011 until June 2011, I find that the landlord is entitled to a monetary award of \$200.00 for each of the three months for the acceleration of the tenant's failure to abide by his agreement to look after and repair the premises for the landlord. I do not allow the landlord's full claim for the final three months of this tenancy as I find that the tenant was likely doing some work over that period which should be reflected in the monetary component of this decision.

I find that the tenant is entitled to obtain a return of his \$1,500.00 security deposit plus applicable interest.

As both parties have been partially successful in their applications, I find that they are both responsible for their own filing fees.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover his security deposit and the landlord to recover losses and damage she incurred arising out of this tenancy:

Item	Amount
Landlord's Application for Recovery of Rental Loss Resulting from September 2010 until March 2011 (7 months @ \$50.00 = \$350.00)	\$350.00
Landlord's Application for Recovery of Rental Loss Resulting from April 2011 until June 2011 (3 months @ \$200.00 = \$600.00)	600.00
Plumbing Repairs	137.20
Less Security Deposit (\$1,500.00 + \$42.53 = \$1,542.53)	-1,542.53
<b>Total Monetary Order</b>	<b>(\$455.33)</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2011

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Residential Tenancy Branch