



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not appear at the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on January 15, 2009 and the Tenant moved out of the unit on September 2, 2011. At the end of the tenancy, rent in the amount of \$3,375.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$1,250.00 and a key deposit in the amount of \$1,250.00. Over the length of the tenancy, the Landlord increased the rent and collected an increase in the amount of the security deposit to the total amount at the end of the tenancy of \$3,375.00. A move-in and move-out inspection was completed between the Parties and the Landlord provided copies of those reports as evidence. The Landlord claims damages as follows:

- Unpaid water utilities from the duration of the tenancy in the amount of \$1,170.00. It is noted that the lease agreement provides for the Tenant to pay the water bills and that the Landlord paid these bills.
- Damages to the stove and dishwasher in the amount of \$904.78. An estimate was provided for these damages which includes items not noted on the move-out. It is noted that the move-out report notes only a missing dishwasher soap cap and a broken glass stove top.
- Damages to the walls of the unit in the amount of \$2,016.00 for painting the unit and drywall repairs in the amount of \$840.00. No invoice was provided for these amounts and the Witness stated that this work was completed by the Witness who painted the entire unit. It is noted that the move-out report notes nail holes in four rooms of the unit, marks on the walls of 2 rooms and wall damage in the hallway. The nail holes referred to are in relation to picture nails. The Landlord states that one wall had nail holes from a shelving unit, however no photo of this damage is provided.
- Damage to the carpet in the amount of \$4,500.00. No invoice was provided for this cost and it is noted that the move-out report notes two nails in the living room carpet and a loose carpet in the master bedroom. The Landlord states that carpet was replaced in two bedrooms and the hallway.
- Loss related to the Tenant remaining in the unit for an extra day in the amount of \$300.00. The Landlord states that the Tenant agreed to pay for one extra day for the late move-out, that no tenants were moving into the unit at the time and the unit remains empty.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 37 of the Act provides that at the end of the tenancy, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Accepting the undisputed evidence of the Landlord that the water bills were unpaid by the Tenant, given the lease agreement that requires the Tenant to pay these utilities, and considering the accounting provided by the Landlord, I find that the Landlord is entitled to the amount of **\$1,170.66**.

Given that the Landlord provided no evidence to support damage to the unit other than the move-out report, and considering the invoice supplied by the Landlord, I find that the Landlord is entitled to recovery of costs only in relation to the broken glass stove top and dishwasher soap dish in the amount of \$378.24 and \$56.65 plus a portion of the labor and service costs in the amount of \$85.00 for a total amount of **\$519.89**.

Given that no invoices were provided, accepting the oral evidence of the Witness and Landlord who states that the entire unit was painted and that the nail holes referred to in the move-out report were from picture nails, and considering that a tenant can only be found to be liable for costs over and above wear and tear, I find that the Landlord is not entitled to the entire amount claimed. Given that there is some merit to the claim however in relation to the damage noted in the hallway, I find that the Landlord is entitled to the nominal amount of **\$200.00**.

Given the move-out report that notes only two nail holes in one living room carpet and a loose carpet in one bedroom, considering these damages to be minimal or equivalent to normal wear and tear, and considering that the carpets replaced include carpets to

areas not noted as damaged in the move-out report, I dismiss the claim of the Landlord in relation to the replacement of the carpets.

Accepting that the Tenant agreed to pay for over holding the unit by one day, I find that the Landlord is entitled to a pro-rationed amount of the monthly rent for this day in the amount of **\$112.00**.

The Landlord is entitled to the total amount of **\$2,002.55**. Given that the Landlord has been partially successful, I also find that the Landlord is entitled to partial recovery of the filing fee in the amount of \$50.00 for a total monetary entitlement of **\$2052.55**.

As the Landlord holds the amount of \$3,375.00 as a security deposit, although noting that the amounts collected by the Landlord for a key deposit and the increase over the term of the tenancy is contrary to the provisions of the Act, I order the Landlord to retain the amount of **\$2,052.55** from the security deposit plus interest of \$3,375.00 and to return the remaining amount of **\$1,322.45** forthwith to the Tenant.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the amount of **\$2,052.55** from the security **deposit** and interest of \$3,375.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the balance due to the Tenant of **\$1,322.45**. If necessary, this order may be filed in the 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: December 01, 2011.

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Residential Tenancy Branch