



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD, FF / MND, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to 2 applications: i) by the tenant for return of a portion of the combined security & pet damage deposit(s) / and recovery of the filing fee; ii) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the combined security & pet damage deposit(s) / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 30, 2010. Monthly rent of \$1,100.00 was payable in advance on the 30<sup>th</sup> day of each month preceding the month for which rent was due. A security deposit of \$550.00 and a pet damage deposit of \$150.00 were collected. A move-in condition inspection report was completed on March 30, 2010, and a copy was submitted in evidence.

By letter dated August 29, 2011, the tenant gave notice of intent to vacate the unit effective October 1, 2011. The parties agreed that the tenant had finished moving out by on or about September 30, 2011. A move-out condition inspection and report were completed with the participation of both parties on October 5, 2011. On the next day, the landlord undertook a further move-out condition inspection in the absence of the tenant, and amended the earlier move-out condition inspection report. Amendments were initialled. A copy of each of the reports was submitted in evidence.

The landlord testified that she was not informed in writing of the tenant's forwarding address until she received the tenant's application for dispute resolution on November

15, 2011. Thereafter, the landlord filed an application for dispute resolution on November 25, 2011.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord will retain \$120.00 from the tenant's security deposit in consideration of the cost to clean carpets at the end of tenancy;
- that the landlord will retain \$25.00 from the tenant's security deposit in consideration of the cost of replacing one key;
- that the landlord will retain \$89.60 from the tenant's security deposit in consideration of the cost of a plumber.

Total settled: **\$234.60\***

The attention of the parties is drawn to other particular sections of the Act. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony of the parties, the remaining aspects of the landlord's claim and my findings around each are set out below.

\$150.00: carpet damage. I note that this concern is not documented on the move-out condition inspection report completed when both parties undertook the move-out condition inspection together on October 5, 2011. Rather, it is documented on the move-out condition inspection report which was completed by the landlord on her own during the following day, October 6, 2011. Further, there is no receipt in support of any actual cost incurred by the landlord. In sum, this aspect of the application is hereby dismissed.

\$275.99: repairs / painting. While some need of repairs and painting is described on the move-out condition inspection report completed together by the parties on October 5, 2011, more detail appears on the move-out condition inspection report completed by the landlord without the tenant's participation on October 6, 2011. I find on a balance of probabilities that the landlord has established entitlement limited to \$138.00\*, which is half the amount claimed.

\$66.00: cleaning. This cost arises out of cleaning the landlord claims was required for the kitchen oven, windows and 3 bathrooms. However, there is either minimal or no statement as to the condition of these items on the move-in condition inspection report, and similarly, there is either minimal or no statement as to the condition of these items on the move-out condition inspection report completed when the parties undertook a move-out condition inspection together on October 5, 2011. The greatest detail related to the need for cleaning is set out on the move-out condition inspection report completed by the landlord without the tenant's participation on October 6, 2011. In the result, this aspect of the application is hereby dismissed.

\$263.63: paint. For reasons that are similar to those set out above under “repairs / painting,” I find on a balance of probabilities that the landlord has established entitlement limited to \$131.82\*, which is half the amount claimed.

\$324.00: fireplace. Further to the fact that documentary evidence includes a “quotation,” as opposed to a receipt for payment, the fireplace is not identified on the move-in condition inspection report or either of the 2 move-out condition inspection reports. Additionally, I note that the “quotation” is dated December 20, 2011, which is nearly 3 months after the end of this tenancy and nearly 2 months after the time when new tenants moved in. In summary, I find that the landlord has provided insufficient evidence to support this aspect of the claim and it is hereby dismissed.

\$514.60: “other costs.” Pursuant to their agreement, as above, this amount has been reduced to \$400.00 (\$514.60 - \$114.60), calculated as follows:

\$89.60: plumber

\$25.00: replacement key

Total: \$114.60

The balance of \$400.00 claimed by the landlord arises from what is described as “Loss of income due to damage, cleaning and repair time (2 weeks).” Following from my findings set out above under “repairs / painting” and “paint,” but in the absence of any evidence related to efforts made by the landlord to advertise and show the unit to potential renters, I find on a balance of probabilities that the landlord has established entitlement limited to \$200.00\*, which is half the amount claimed (1 week).

\$73.73: mailing costs. Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

Total entitlement: \$704.42

I order that the landlord retain the tenant’s combined security & pet damage deposit(s) combined in the amount of \$700.00 (\$550.00 + \$150.00), and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$4.42 (\$704.42 - \$700.00).

As both parties took an opportunity during the hearing to resolve some aspects of the dispute, their respective applications to recover the filing fee are both hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4.42**. Should it be necessary, this Order may be served on the tenant, 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: January 12, 2012.

---

Residential Tenancy Branch