



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNR, MND, MNSD, FF

### **Introduction**

This matter dealt with an application by the Landlords for unpaid utilities, for compensation for repairs to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

In previous proceedings between these parties heard on September 26, 2011, the Tenants applied for and were granted an Order requiring the Landlords to return their security deposit. Consequently, I find that the Landlords are now barred by the legal principle, *res judicata*, from re-litigating that issue and that part of their application is dismissed without leave to reapply.

### **Issue(s) to be Decided**

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?

### **Background and Evidence**

This tenancy started on December 1, 2010 and ended on May 25, 2011 when the Tenants moved out. A term of the tenancy agreement states that "Tenant is responsible to transfer utilities into their name and paid all usage fees during their tenancy." The Landlords claimed that this term required the Tenants to pay all utilities including the water bill and that they did not pay \$61.80 owing for the last 2 months of the tenancy. The Tenants claimed that they did not agree to pay the water bill but only did so reluctantly during the tenancy.

The Parties completed a condition inspection report at the beginning of the tenancy. The Landlords said the rental unit had been newly renovated at that time and was in good condition. The Landlords completed a condition inspection report on May 30, 2011 without the Tenants. The Tenants said they asked the Landlords on May 25, 2011 to do a move out inspection because it was a term of the tenancy agreement that they would receive their security deposit back within 24 hours. The Tenants said the Landlords did not call them back until May 31, 2011 and advised them that due to a

number of damages they would not be getting their security deposit returned. The Tenants said they asked the Landlords if they could view the damages but the Landlords refused. The Landlords denied that the Tenants asked them to do a move out inspection but admitted that they did not offer the Tenants an opportunity to participate. The Landlords claim that as a result of their inspection on May 30, 2011, they discovered a number of damages to the rental unit.

1. Kitchen Cupboards: The Parties agree that the Tenants mounted a key box on the end of the cupboards with screws. The Landlords claimed that the screw holes damaged the melamine finish on the cabinets and that because any repairs would be obvious, the whole cupboard would have to be replaced at a cost of \$442.40. The Tenants said screw mounts for the key box were small but in any event they offered to give the Landlords the key box to re-hang so it would conceal the screw holes.
2. Bedroom Closet Bi-Fold Door: The Landlords said that there was a hole in the top, left-hand corner of a bi-fold door that was new at the beginning of the tenancy. The Landlords said this door could not be repaired because it was manufactured wood and had to be custom fit. Consequently, the Landlords said the door would have to be replaced at a cost of \$234.00. The Tenants denied that there was any damage to the closet door.
3. Walk-in Closet Baseboards: The Landlords said the Tenants reported to them at the end of the tenancy and they found mould along a section of the baseboards in a walk-in closet. The Landlords said they removed the baseboards to determine if there was water behind them but found none. Consequently, the Landlords said they concluded that the Tenants had stored something wet in the closet. The Landlords said the Tenants previously resided in an adjacent townhouse so they knew that they had some articles stored outdoors and argued that some of these articles may have been the cause of the mould. The Landlords said they felt it would be best to replace the mouldy baseboards with new ones and they claimed \$86.00 for this expense.

The Tenants said they had to discard a leather jacket and travel bag that were stored in the closet because they were covered in mould but denied storing anything wet in the closet. The Tenants said they had no idea if the baseboards had to be replaced because they were not given an opportunity to view it.

4. Front Entrance Door Sweep: The Landlords said the sweep or weather stripping at the bottom of the front door was partially pulled away and had to be replaced at a cost to them of \$66.00. The Tenants said they did not believe the weather stripping was pulled away but claimed in any event they could not be sure because they never had an opportunity to view the damages alleged by the Landlords.

5. Wall Repairs and Repainting: The Landlords said the Tenants hung pictures on walls with screw anchors without their consent. The Landlords said when they removed the screw anchors, they left holes in the walls and that this will have to be repaired and repainted at a cost to them of \$548.80. The Tenants argued that they were entitled to hang pictures and that they used proper drywall hangers to do so. The Tenants also argued that they Landlords caused the damages deliberately by removing the anchors when they could have simply put buttons on the end of them.
6. Garbage removal: The Landlords said the Tenants left a box spring and chair at the rental unit which they disposed of at a cost of \$6.00 (plus \$50.00 for labour). The Tenants argued that they would have made arrangements with the Landlords to move the articles had the Landlords returned their call on May 25, 2011. The Tenants also argued that they went to the rental unit on May 30 or 31, 2011, however the locks had been changed and the articles were not there. The Landlords argued that the Tenants abandoned the articles because they left a sign on the box spring that said, "free for taking."

### **Analysis**

The Tenants did not dispute that there may have been unpaid water charges at the end of the tenancy but they argued that they never agreed to pay the water bill. While I find that the tenancy agreement is vague as to what utilities the Tenants were supposed to pay, I also find that the Tenants, by their act of paying the water bill during the tenancy did agree to be responsible for it. However, in support of their claim for this expense, the Landlords provided only a receipt for the payment of \$61.80. The Landlords did not provide a billing statement to verify what period of time the payment related to. For this reason, I find that there is insufficient evidence to support this part of the Landlords' claim and it is dismissed without leave to reapply.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

RTB Policy Guideline #1 at p. 4 says that a Landlord may set rules as to how tenants can hang pictures. If the tenant follows the Landlord's reasonable instructions for hanging and removing pictures, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. However, the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screw or tape have been used and left wall damage. Page 3 of the same Guideline states that any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition.

Sections 35 of the Act requires a landlord to complete a condition inspection report at the end of a tenancy ***with the Tenant***. Section 17 of the Regulations to the Act says that a Landlord must offer a Tenant two opportunities to schedule the condition inspection. Section 21 of the Regulations to the Act says that a condition inspection report is evidence of the condition of the rental unit on the date of inspection ***if*** it is completed in accordance with the Regulations. I find that the Landlords did not give the Tenants an opportunity to complete a move out inspection report as required by s. 17 of the Regulations to the Act and for that reason I find that the report is of no evidentiary value. The Landlords also provided photographs of the rental unit that they said they took on May 25 or 26, 2011. The Tenants argued that the Landlords' photographs were unreliable because they could not be sure when they were taken.

1. Kitchen Cupboards: I find that the Tenants did not have the Landlords' consent to mount a key box on the cupboards with screws and that as a result, they are responsible for the cost to repair that damage. I also find, however, that it is unreasonable to replace a whole cabinet for the sole reason that repairs to two small screw holes cannot be completely concealed. Consequently, I find that the Landlords are entitled to reasonable repair expenses which I assess at **\$50.00**.
2. Bedroom Closet Bi-Fold Door: The Landlords argued that given that this door was not damaged at the beginning of the tenancy but was found damaged immediately after the Tenants vacated, the only logical conclusion was that the Tenants damaged it. The Tenants claimed that the door was not damaged at the end of the tenancy and argued that it was not clear when the Landlords' photograph was taken. Given the contradictory evidence of the parties regarding this door and in the absence of any reliable, corroborating evidence from the Landlords (who bear the burden of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for the damage and this part of the Landlords' claim is dismissed without leave to reapply.
3. Walk-in Closet Baseboards: The Landlords argued that given that there was no moisture behind the baseboards, the moisture must have been introduced by the Tenants. The Tenants claimed they did not believe they had stored anything wet in the closet and could not be sure of the source of the moisture because they had not been allowed to inspect it at the end of the tenancy. Given the contradictory evidence of the parties regarding the mould on the baseboards and in the absence of any reliable, corroborating evidence from the Landlords (who bear the burden of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for the damage and this part of the Landlords' claim is dismissed without leave to reapply.
4. Front Entrance Door Sweep: The Landlords argued that the Tenants were responsible for damaging a section of weather stripping at the base of the front door. The Tenants claimed they had no knowledge of this damage because they had not been allowed to inspect it at the end of the tenancy. Given the

contradictory evidence of the parties regarding the weather stripping and in the absence of any reliable, corroborating evidence from the Landlords (who bear the burden of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for the damage and this part of the Landlords' claim is dismissed without leave to reapply.

5. Wall Repairs and Repainting: I find that the Tenants hung some pictures on the walls of the rental unit using screw anchors. The Landlords provided photographs of the 8 anchors in question and they appear to be approximately two inches in length and ½ inch in diameter. The Tenants argued that it was unnecessary for the Landlords to remove these anchors and make holes in the walls. However, I find that the Landlords were entitled to return the walls to their original condition but I find that the amount claimed by the Landlords for these repairs is unreasonable.

The quote provided by the Landlords states that the amount of \$548.80 is to "repair affected wall damages, prime and paint affected areas." The Landlords provided no evidence as to how many walls required repairs or the extent of the repairs (or size of the holes) in question. Furthermore, I find that it would not have been time consuming to patch 8 holes of ½ inch in diameter (and a few other smaller nail holes) and to spot paint over those repairs. Consequently, I award the Landlords the amount of **\$100.00** for this part of their claim.

6. Garbage removal: The Landlords said the Tenants abandoned some articles at the end of the tenancy which they had to dispose of. The Tenants argued that the Landlords removed the articles in question before the end of the tenancy. I disagree with the Tenants' position that the tenancy ended on May 31, 2011 and find instead that the tenancy ended on May 25, 2011 when the Tenants vacated the rental unit and advised the Landlords that they had done so. Consequently, I conclude that the Tenants did abandon the articles in question and I am further persuaded that this was the case given that they left a sign on the box spring that it was "free for taking." As a result, I award the Landlords \$6.00 for their disposal fees and \$30.00 for labour for a total of **\$36.00**.

As the Landlords have had minimal success on their application in this matter, I find that it is not an appropriate case to order the Tenants to bear the cost of the filing fee paid by the Landlords for this proceeding and that part of their application is dismissed without leave to reapply.

## **Conclusion**

A Monetary Order in the amount of **\$186.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 24, 2012.

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Residential Tenancy Branch