



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on October 7, 2011 seeking a monetary award for unpaid rent, costs of cleaning the rental unit, damage to the rental unit, loss or damage under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit and pet damage deposits in set off against the balance owed.

As a matter of note, this dispute was originally set for hearing on December 29, 2011. One tenant and the landlord called in to the number provided to enable their participation in the telephone conference call hearing; however, due to a technical difficulty, the Dispute Resolution Officer was unable to connect. Therefore, the hearing was rescheduled to the present.

As a preliminary matter, the landlord submitted further evidence on December 20, 2011 which increased his claims from \$4,136 to \$6,250.58. Such a change would have required the landlord to submit an amended application and to have served that to the tenants. In addition, as the change would have raised the claims to over \$5,000, the landlord would have been required to pay a \$100 filing fee instead of the \$50 charged for the original application.

Therefore, as the application has not been properly amended, the original \$4,136 is set as the maxim that may be claimed, although I accept the evidence in the December 20, 2011 submission to the extent that it supports claims made in the original application of October 7, 2011.

In addition, the attending tenant stated that he was not aware of the present address of his co-tenant who he said was responsible for much of the damage. However, it was noted that in a co-tenancy, the parties are jointly and severally liable and the tenant who had been served can be held accountable for the claims.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security and pet damage deposits in set off. Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on August 1, 2010 under a fixed term rental agreement set to end on July 31, 2011 with the option of proceeding as a month to month tenancy. Rent was \$1,035 per month and the landlord holds a security deposit of \$520 and a pet damage deposit of \$515, both paid on or about August 1, 2011.

During the hearing, the landlord gave evidence that after having given verbal notice on August 1, 2011, he had advised the tenants that notice to end tenancy must be in writing, the tenants submitted written notice on August 8, 2011. As set out at section 45 of the *Act*, such notice would have had an effective end of tenancy date of September 30, 2011.

The attending tenant stated that, due to an illness in his family, he left the tenancy in August but had done some cleaning, made arrangements for further cleaning, and relied on his co-tenant to complete the work. The co-tenant did not give up vacant possession until September 6, 2011.

The landlord stated that despite having given the remaining tenant four opportunities to complete the move-out condition inspection report, he did not attend on any of those occasions, thereby extinguishing the tenants' to claim on the deposit.

The landlord submitted claims in rent, damage remediation and damage or loss under the legislation or rental agreement on which I find as follows:

**Unpaid rent/loss of rent for September 2011 - \$1,035.** I accept the evidence of the landlord that notice was given late, that one tenant and/or his property remained in the rental unit into September, and that the condition in which the rental unit was left required some time to for cleaning and repair. This claim is allowed in full.

**Smoke damage remediation supplies - \$1,598.70.** The landlord pointed to an addendum on the rental agreement which prohibited smoking in the rental unit and which required the tenants to pay the full cost of remediation if there was smoking in the unit. The attending tenant concurred that his co-tenant had smoked in the rental unit despite his repeated admonishments. The landlord submitted numerous receipts in support of this claim and it is allowed in full.

**Smoke remediation painting costs - \$1,325.** The landlord originally stated that he believed the rental unit had been painted immediately prior to the tenancy in question, however, the tenant rebutted that claim stating his moving in overlapped the moving out of the previous tenants and there would not have been time for repainting. The landlord said that irrespective of that, the unit would not have required repainting if the tenant had not smoked in it. Standard depreciation tables place the useful life of interior paint at four years. In the absence of greater certainty on the landlord's part as to when the unit was previously painted, I find that the regular paint was fully depreciated. Having allowed extraordinary charges for the damage attributable to smoking on the previous item, I find that this claim is reasonably within the range for regular repainting and that it is part of the landlord's normal responsibilities. This claim is dismissed.

**Cleaning supplies – \$67.43.** This claim is supported by receipts and it is allowed in full.

**Cleaning costs, labour - \$1,710.** The landlord submits this claim for 47 hours of his own time at \$30 per hour plus \$150 paid to each of two family members. I find that this claim is far beyond the customary charges for cleaning and I find that the landlord has not met the burden of proof that would be required to substantiate such an extraordinary charge. I will allow \$400 on the claim.

**Dog damage - \$188.60.** This claim is made for replacement of the rear entrance screen door, the rear door seal, and living room blind, damaged by the tenants' dog. It is supported by receipts and allowed in full.

**Other damage - \$221.61.** This claim is for repair of a bathroom door jamb which the attending tenant acknowledged having damaged after it had been left locked. The claim also includes repair of the sprinkler system which had been damaged by the tenants' guests. It is allowed.

**Waste disposal - \$54.24.** Allowed.

**Filing fee - \$50.** Having found merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security and pet damage deposits – (\$1,035).** As authorized under section 72 of the *Act*, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for September 2011	\$1,035.00
Cleaning supplies	67.43
Cleaning costs, labour	400.00
Dog damage	188.60
Other damage	221.61
Waste disposal	54.24
Filing fee	<u>50.00</u>
Sub total	\$3,615.58
Less retained security and pet damage deposits (No interest due)	<u>- 1,035.00</u>
<b>TOTAL</b>	<b>\$2,580.68</b>

### Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$2,580.68** for service on the attending tenant who had been served.

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 06, 2012.

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Residential Tenancy Branch