



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application filed November 9, 2011: MNR; MNDC; MNSD; FF

Tenants' application filed November 30, 2011: MNDC; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for unpaid rent and compensation for damage or loss under the Act; and to recover the cost of the filing fee from the Tenant MA.

The Tenants seek compensation for damage or loss under the Residential Tenancy Act (the "Act"); return of the security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

1. Is the Landlord entitled to a Monetary Order pursuant to the provisions of Sections 7 and 67 of the Act?
2. Are the Tenants entitled to a Monetary Order pursuant to the provisions of Sections 7 and 67 of the Act?
3. Disposition of the security deposit.

### **Background and Evidence**

This tenancy began on September 1, 2009. A copy of the tenancy agreement was provided in evidence. Monthly rent at the beginning of the tenancy was \$1425.00, due on the first day of each month. The tenancy agreement indicates that the Tenants paid a security deposit in the amount of \$725.00 and a "utility deposit" in the amount of \$200.00 at the beginning of the tenancy.

### **The Landlord provided the following testimony:**

The Landlord testified that the Tenants moved out of the rental unit on November 17, 2011. She testified that the Tenants phone her on October 22, 2011, to tell her that that they would be moving out of the rental unit in November, 2011. She testified that she

told the Tenants that she required notice to be in writing. The Landlord testified that there was no written notice in her mail box by October 31, 2011. She testified that a letter from the Tenants dated October 17, 2011, was not provided to her until November 4, 2011, which was insufficient notice to end the tenancy on November 17, 2011. The Landlord provided a copy of the letter and the envelope in which it was contained in support of her claim.

The Landlord testified that the Tenants paid only \$800.00 in rent for November, 2011, and the Landlord seeks the remainder of November's rent in the amount of **\$625.00**.

The Landlord also seeks loss of revenue for the month of December, 2011, in the amount of **\$1,425.00**. She stated that after the Tenants moved out she started advertising the rental unit in the local paper and on a popular on-line web site, but that it was still not re-rented as of the date of the Hearing.

The Landlord testified that the parties had an agreement that the Tenants would pay 60% of the utilities and that the Tenants owe **\$710.34** in unpaid utilities. The Landlord testified that the \$200.00 "utility deposit" was used to pay for the first utility bills. The Landlord provided a handwritten worksheet entitled "Rents from Sept 09 – Dec 2011", which indicates, in part:

"utilities pd. 1423.30, utilities cost \$2243.08 owe land lord \$819.78  
Tenant owes 2050 + 819.78 = 2869.78  
– (19.32+ 90.12=) 109.44  
2760.34 "

The Landlord also provided:

- 29 calendar pages from September 2009 to December 2011;
- A 2 page statement from the Gas company indicating gas charges from July, 2009 to December, 2011;
- 10 pages of bank statements; and
- 18 pages of deposit slips and cheques (2 to 3 to a page)

The Landlord testified that the Tenants did not return the keys to the rental unit until December, by registered mail. The Landlord stated that she had to have three doors rekeyed, which cost **\$122.53**. She provided a copy of the receipt in evidence and seeks to recover this cost.

The Landlord testified that the Tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy, and seeks compensation for what she paid to

have the carpets shampooed, the house cleaned, the decks cleaned and for items she purchased for repairs, as follows:

|  |                 |
|--|-----------------|
| Cost to shampoo carpets  | \$302.96        |
| House cleaning (professional cleaners 3 hours @\$85.00 per hour) | \$285.60        |
| Repair supplies and paint  | \$110.95        |
| Cleaning decks   | <u>\$40.00</u>  |
| TOTAL  | <b>\$739.51</b> |

She stated that the Tenants did not clean the oven at the end of the tenancy and that they broke the stove. She stated that it would cost \$655.65 to clean and repair the stove, calculated as follows:

|   |                 |
|---|-----------------|
| Repair estimate                                 | \$351.60        |
| Service call                                    | \$113.65        |
| Cleaning (2 hours @ \$85.00 per hour, plus tax) | <u>\$190.40</u> |
| TOTAL   | <b>\$655.65</b> |

The Landlord testified that the stove was purchased in 2007, but was only used for 8 months prior to the Tenants moving in. The Landlord stated that she purchased a new stove for \$649.59, including taxes, and that she paid additional fees of \$72.80 for delivery of the stove and \$20.40 for removal of the broken stove, for a total cost of **\$744.79**. The Landlord seeks a monetary award for this cost.

The Landlord testified that after the carpets were cleaned, it became apparent that they were too badly stained and needed to be replaced. She stated that the Tenants also ruined the finish on some wooden cabinets. The Landlord estimates that it will cost her **\$6,500.00** to replace the carpets, paint the rental unit and refinish the cabinets.

The Landlord provided photographs of the rental unit in support of her claim. She stated that the photographs were taken on November 21, 2011.

The Landlord provided a copy of the move-out condition inspection report in evidence. She stated that she started the inspection with the Tenants on November 14, 2011, but that they were still cleaning, so the parties agreed that the Landlord could finish the report later and provide them a copy.

The Tenant MA gave the following testimony:

The Tenant testified that they finished moving their furniture out of the rental unit on November 13, 2011, and spent three nights cleaning the rental unit so it was clean,

including the stove, for the end of tenancy on November 17, 2011. The Tenant testified that she was still using the stove at the end of the tenancy and that it was not broken. The Tenant stated that the Landlord's photographs could not possibly have been on November 21, 2011, because the rental unit was clean at the end of the tenancy.

The Tenant testified that she paid \$200.00 for the carpets to be shampooed, but did not get a receipt.

The Tenant agreed that she only paid \$800.00 towards November's rent. She agreed that she returned the keys, by registered mail, at the beginning of December, 2011.

The Tenant disputed the remainder of the Landlord's claim for cleaning and repairs to the rental unit. The Tenant testified that the Tenant DC signed the report on November 14, 2011, indicating that the Landlord could deduct \$750.00 from the security deposit because he did not understand what it meant.

The Tenant agreed that the Tenants were to pay 60% of the utilities, but stated that she had asked the Landlord to provide copies of the utility bills to the Tenants but the Landlord never did. The Tenant stated that the Tenants didn't feel they should just pay what the Landlord told them to pay without proof of the actual cost of utilities. The Tenant agreed that the \$200.00 "utility deposit" was used up at the beginning of the tenancy.

The Tenant testified that the Landlord charged an additional \$100.00 for rent for each of the months of December, 2010, January and February, 2011, and the Tenants seek to recover that overpayment in the amount of **\$300.00**.

The Tenant testified that she gave the Landlord written notification of the Tenants' forwarding address on November 14, 2011, but the Landlord has not returned the security deposit. The Tenant testified that the Tenants paid a security deposit in the amount of \$712.50 and that the Tenants seek double the amount of the security deposit in compensation, in the amount of **\$1,425.00**.

The Landlord gave the following reply:

The Landlord stated that she charged an extra \$100.00 per month while the Tenants had additional family members living in the rental unit because it was an extra strain on the septic field. She stated that there was no agreement in writing that the Tenants would pay the extra rent.

## **Analysis**

It is important to note that the Landlord charged a “utility deposit” at the beginning of the tenancy. There is no provision in the Act for such a fee and therefore I find that the \$200.00 “utility charge” was a security deposit. However, the parties agreed that the \$200.00 was applied towards the Tenant’s share of utilities at the beginning of the tenancy.

The Tenant testified that the security deposit was \$712.50 however the tenancy agreement shows that the security deposit was \$725.00. I find that the security deposit was \$725.00 based on the written tenancy agreement.

### **Regarding the Tenants’ application**

I find that the extra \$100.00 the Landlord charged for rent for the months of December, 2010, and January and February, 2011, was an illegal rent increase and award this portion of the Tenants’ claim in the amount of **\$300.00**.

Section 38(6) of the Act requires a landlord to pay compensation to a tenant in the equivalent of double the amount of the security deposit if the landlord does not apply against the security deposit or refund the security deposit within 15 days of the end of the tenancy or the date that the tenant provides a forwarding address in writing (whichever date last occurs). In this case, the Tenants provided their forwarding address on November 14, 2011 and the tenancy ended on November 17, 2011. The Landlord filed her application against the security deposit on November 9, 2011. Therefore, I find that the Tenants are not entitled to compensation pursuant to the provisions of Section 38 of the Act. This portion of their application is dismissed.

### **Regarding the Landlord's claim**

The Landlord's Application for Dispute Resolution indicates that she seeks a monetary order in the amount of \$3,259.30. The Landlord did not amend her application to include a claim for the cost of replacing carpets or refinishing cupboards. Nor did she provide any documentary evidence to support her claim that the estimates total \$6,500.00. This portion of the Landlord's application is dismissed.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant MA pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the Act provides that a Tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. In this case, the Tenants did not provide the Landlord with due notice that would end the tenancy before December 31, 2011, and I find that the Landlord has established her claim for unpaid rent for November in the amount of **\$650.00** and loss of revenue for the month of December, 2011, in the amount of **\$1,450.00**.

The Landlord did not provide sufficient evidence to prove her claim for unpaid utilities. The Landlord did not provide copies of the actual utility bills, or a clear and concise accounting of the amounts due and the amounts paid. This portion of her claim is dismissed.

Section 37(2) of the Act requires a tenant to provide the landlord with all of the keys to the rental unit at the end of the tenancy. The Tenants did not return the keys until at least two weeks after the tenancy ended. I find that the Landlord has established her claim in the amount of **\$122.53** for the cost of rekeying the locks.

I dismiss the Landlord's application for the cost of replacing the stove for the following reasons:

- The Landlord did provide sufficient evidence that the stove was broken or that the Tenants had broken it.
- The Landlord did not provide a formal estimate from a repair person of the cost to repair the stove.

This portion of her claim is dismissed.

A landlord is required to provide two opportunities for the tenant to perform a move-out condition inspection report at the end of the tenancy. In this case, the Landlord expected to do the inspection on November 14, 2011, when the Tenants still had three days to complete the cleaning. There was no evidence that the Landlord scheduled an inspection to be done, with both parties present, at the end of the tenancy and

therefore, I find the Condition Inspection Report that was completed by the Landlord on November 14, 2011, cannot be relied upon to be a true picture of the state of the rental unit on November 17, 2011.

The Tenants testified that they cleaned the rental unit at the end of the tenancy and that the Landlord's photographs did not show the state of the rental unit when they finished cleaning. The Landlord submitted that the Tenants were not finished cleaning when she saw them on November 14, 2011. Therefore, I find that the Landlord did not provide sufficient proof that the rental unit was not satisfactorily clean at the end of the tenancy and this portion of her application is dismissed.

Section 37(2) of the Act requires tenants to leave the rental unit in **reasonably** clean condition. Some landlords choose to clean the rental unit to a higher standard for the next occupant, but there is no requirement for tenants to meet that higher standard.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

The Landlord has established a monetary award, calculated as follows:

|                                    |                   |
|------------------------------------|-------------------|
| Unpaid rent for November, 2011     | \$650.00          |
| Loss of revenue for December, 2011 | \$1,450.00        |
| Cost to rekey the rental unit      | <u>\$122.53</u>   |
| <b>TOTAL AWARD</b>                 | <b>\$2,222.53</b> |

I hereby provide the Landlords a Monetary Order against the Tenant, calculated as follows:

|   |                   |
|---|-------------------|
| Monetary award as proven                              | \$2,222.53        |
| Less security deposit                                 | <u>-\$725.00</u>  |
| <b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b> | <b>\$1,197.53</b> |

I order that the parties each bear the cost of filing their applications.

### **Conclusion**

The Tenants have established a monetary award of **\$300.00**.

The Landlord has established a monetary award of **\$2,222.53**. The Landlord may apply the security deposit towards partial satisfaction of her monetary award. I hereby provide

the Landlord a Monetary Order in the amount of **\$1,197.53** for service upon the Tenant MA, representing the balance owing after setting off the Tenants' award and the security deposit. This Order may be filed in the Provincial Court of British Columbia (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: February 07, 2012.

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Residential Tenancy Branch