



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask questions, to call witnesses, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; for compensation for damage to the rental unit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began in December of 2009, although they disagree on the specific start date; that the Tenant was required to pay monthly rent of \$900.00 by the first day of each month; that on October 29, 2011 the Tenant gave the Landlord verbal notice of their intent to vacate the rental unit; and that the Tenant vacated the rental unit on October 30, 2011.

The female Landlord stated that the rental unit needed to be cleaned before it could be re-rented; that they never advertised the rental unit because her son was going to move into the unit; that her son and another male moved their bedroom furniture into the

rental unit on October 31, 2011 but they did not begin living in the rental unit until December 01, 2011; and that they did not pay rent until January 01, 2012.

The male Landlord stated that if they had been given proper notice to end this tenancy his son and the male who moved into the unit after this tenancy ended would have had enough time to save money for the purposes of paying rent.

The Tenant submitted postings from a popular social networking site, for the period between October 30, 2011 and November 04, 2011, in which one of the males occupying the rental unit has posted pictures of his bedroom and a fridge filled with beer.

The Landlord and the Tenant agree that when the tenancy began some of the furnishings in the rental unit belonged to the female Landlord's mother and the male Tenant's grandmother, who had passed away shortly before the start of this tenancy.

The male Tenant stated that his mother and the Landlord, who are sisters, jointly agreed to disperse their mother's property amongst family members; that items neither of them wanted were either sold at a garage sale or given to charity; that some of the property left in the rental unit was property the sisters had agreed to give to other members of the family but he was allowed to use while living in the rental unit; and that he was given some of the property left in the rental unit.

The female Landlord stated that she and her sister agreed to disperse their mother's property amongst family members; that items neither of them wanted were either sold at a garage sale or given to charity; and that the Tenant was allowed to use all of her mother's property that was left in the rental unit during their tenancy but it was to be left in the unit at the end of the tenancy.

The male witness for the Landlord stated that he is the Landlords' son and that he overheard conversations between his mother and her sister, in which they agreed that his grandmother's property that was in the rental unit at the start of this tenancy was to remain in the rental unit at the end of the tenancy.

The female witness for the Landlord stated that she is family friend of the Landlord; that she was present when the female Landlord and her sister discussed dispersing their mother's belongings; and that she heard the Landlord and her sister agree that their mother's property that was in the rental unit at the start of this tenancy was to remain in the rental unit at the end of the tenancy.

The witness for the Tenant stated that she is the male Tenant's mother and the sister of the Landlord; that she and her sister agreed to disperse their mother's property amongst family members; that items neither of them wanted were either sold at a garage sale or given to charity; that the Tenant was allowed to use all of her mother's property that was left in the rental unit during their tenancy; and that when the tenancy ended her

mother's property was either taken by the Tenant, by the person who had been given the property, or is being stored for the person who has been given the property.

The Landlord is seeking compensation, in the amount of \$1,699.50, to replace flooring that was damaged during the tenancy. The female Landlord stated that linoleum flooring, which resembles hardwood flooring, was installed shortly before the tenancy began and that it was damaged during the tenancy.

The Landlord submitted photograph #1 in section 14A of the Landlord's evidence, which the female Landlord contends shows the floor is scratched and photograph #2 in section 14A of the Landlord's evidence, which the female Landlord contends shows the floor is damaged. The female Tenant contends that photograph #1 in section 14A of the Landlord's evidence is simply a photograph of a dirty floor and photograph #2 in section 14A of the Landlord's evidence is a photograph of a small indentation in the linoleum floor that was caused by their couch.

The Landlord submitted photograph #3 in section 14A of the Landlord's evidence, which the female Landlord contends shows there is a small hole in the floor; and photographs #6 and #7 in section 14A of the Landlord's evidence, which the female Landlord contends shows there are stains on the floor. The female Tenant contends that all of these photographs depict glue that was left on the floor during the installation process.

The Landlord submitted photographs #4 and #5 in section 14A of the Landlord's evidence, which the female Landlord contends shows the floor is stained. The female Tenant contends that this staining occurred when the Landlord's cat sprayed their Christmas tree during the tenancy. The female landlord stated that she was never advised of this incident.

The Landlord and the Tenant agree that the Tenant scratched the linoleum in the kitchen, as show in photographs #8 and #9 in section 14A of the Landlord's evidence. The Landlord submitted no evidence to show how much it will cost to repair the damaged kitchen linoleum. The Landlord submitted documentary evidence, in the form of a Schedule 12 of an income tax report to show that it paid \$1,699.50 to install the linoleum flooring which resembles hardwood flooring.

The Landlord is claiming compensation, in the amount of \$300.00, for repairing damage to the stove. The Landlord and the Tenant agree that the Tenant had a grease fire in the rental unit which resulted in the oven controls and two burner controls being damaged. The female Tenant contends that the damage is merely cosmetic and does not interfere with the operation of the stove. The Landlord does not dispute this statement, although she is concerned it may malfunction in the future.

The Landlord submitted a receipt to show that it paid \$599.95 to purchase the stove but submitted no evidence to show how much it will cost to repair the damage to the stove.

The Landlord is claiming compensation, in the amount of \$120.00, for cleaning the rental unit. The female Landlord stated that the rental unit required cleaning at the end of the tenancy. The Landlord submitted several photographs that show the rental unit required cleaning, numbered 1-12 in section 16A of the Landlord's evidence.

The female Tenant stated that not all of the Landlord's photographs accurately reflect the condition of the rental unit at the end of the tenancy, although she agrees that photographs 1, 2, 5, and 6 do accurately reflect the state of the unit. She stated that she intended to return on October 31, 2011 to clean these areas but she could not access the rental unit on this date to complete the cleaning because the Landlord's son was sleeping in the unit and she had already returned her key to the Landlord.

The female Tenant stated that she cleaned the inside of the fridge and that photographs #3 and #4 do not accurately reflect the condition of the fridge. She speculates that the Landlord's photograph of the fridge was taken after the new occupants moved into the rental unit. The Tenant submitted no evidence to show the condition of the fridge at the end of the tenancy.

The female Tenant stated that she cleaned the kitchen floor of the rental unit and that the new occupants must have tracked in the dirt depicted in photographs #7. The Tenant submitted photographs of the kitchen floor taken at the end of the tenancy, which depict a clean kitchen floor.

The Tenant does not refute that the areas depicted in photographs #8 and #9 required cleaning, as neither Tenant noticed this area. The female Landlord stated that the floor of the furnace room and a sill in the bedroom required cleaning, as depicted in these photographs.

The female Tenant stated that she cleaned the bathroom sink and toilet and that the new occupants must be responsible for the dirt depicted in photographs #10 and #12. The Tenant submitted photographs of the bathroom taken at the end of the tenancy, which depict a relatively clean bathroom.

The Landlord and the Tenant agree that photograph #11 accurately reflects the condition of the washing machine at the end of the tenancy.

The Landlord submitted a receipt, dated November 16, 2011, which shows that the Landlord paid \$120.00 to the female Witness for the Landlord for cleaning the rental unit.

The Tenant submitted a series of text messages between the male Tenant and one of the new occupants of the rental unit, in which the new occupant stated that he did not think the female Witness for the Landlord had cleaned the unit. The female Landlord stat it was entirely possible that the new occupant was not aware of the cleaning, as he worked during the day.

## Analysis

I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that this late notice resulted in lost revenue for the Landlord for the period between November 01, 2011 and November 30, 2011.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act* or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord had an obligation to mitigate their loss by making timely efforts to locate a new tenant. I find that the Landlord's decision to allow their son and another male to move property into the rental unit prior to November 01, 2011 and their decision to not advertise the rental unit causes me to conclude that they did not attempt to find a new tenant for November of 2011. As the Landlord did not attempt to mitigate their losses by finding a paying tenant for November of 2011 or by collecting rent from their son and/or the other male for November of 2011, I dismiss the Landlord's application for compensation for lost revenue.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. I find that the Landlord has submitted insufficient evidence to show that she owned any of the furnishings that the Tenant removed from the rental unit at the end of the tenancy. In reaching this conclusion I was strongly influenced by the absence of documentary evidence, such as a list of furnishings provided with the rental unit, that corroborates the testimony of the female Landlord and her two witnesses, who contend that the Landlord owned some furnishings/utensils that were removed by the Tenant at the end of the tenancy, or that refutes the testimony of the Tenant and his mother, who contend that the Landlord did not own the property he moved at the end of the tenancy.

It is very clear to me that the two sisters who inherited their mother's property now disagree on how that property was to be divided. I do not have jurisdiction over that matter and I am unable to resolve that matter for the sisters.

As the Landlord has been unable to establish that the Landlord owned any of the property that the Tenant took with him at the end of the tenancy, I dismiss the Landlord's application for compensation for items missing from the rental unit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss

or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant is not obligated to repair any of the damage to the linoleum flooring that resembles hardwood flooring. In reaching this conclusion I was influenced by my determination that damage shown in photographs #1 and #2 in section 14A of the Landlord's evidence appears to be reasonable wear and tear, which the Tenant is not obligated to repair. In reaching this conclusion I was also influenced by that absence of evidence that corroborates the female Landlord's testimony that the markings shown in photographs #3, #6, and #7 in section 14A of the Landlord's evidence is damage caused by the Tenant or that refutes the female Tenant's testimony that those marks are glue left after the flooring was installed. In reaching this conclusion I was also influenced by that absence of evidence that shows the stains shown in photographs #4 and #5 in section 14A of the Landlord's evidence is damage caused by the Tenant or that refutes the female Tenant's testimony that those stains were caused by the Landlord's cat. As the Landlord has not established that the Tenant is obligated to repair any of the damage to the linoleum flooring that resembles hardwood flooring, I dismiss the Landlord's claim for compensation for repairing this damage.

As the Tenant acknowledges damaging the kitchen linoleum, I find that the Tenant failed to comply with section 37(2) when they failed to repair that damage. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the damage to the kitchen linoleum. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that shows how much it will cost to repair the kitchen linoleum. As the Landlord has not established the cost of repairing the kitchen linoleum, I dismiss the Landlord's claim for compensation for repairing the kitchen linoleum.

As the Tenant acknowledges damaging the stove, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to repair that damage. In these circumstances, I find that the Landlord failed to establish the cost of repairing the cosmetic damage to the stove. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that shows how much it will cost to repair the stove. As the Landlord has not established the cost of repairing the stove, I dismiss the Landlord's claim for compensation for repairing the stove.

As the female Tenant acknowledges that photographs 1, 2, 5, and 6 accurately reflect the condition of the rental unit, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. On the basis of those photographs I find that additional cleaning was required.

I do not accept the Tenant's argument that they intended to return on October 31, 2011 to complete the cleaning. I find that this tenancy ended on October 30, 2011 when the Tenant vacated the rental unit, pursuant to section 44(1)(d) of the *Act*, as evidence by

the fact that the Tenant returned the key on that date. I therefore find that all of the cleaning should have been completed on October 30, 2011. As these areas should have been cleaned prior to the end of the tenancy, I find that the Landlord is entitled to compensation for cleaning these areas.

I find that the interior of the fridge also required cleaning at the end of the tenancy. I favour the female Landlord's testimony over the female Tenant's testimony in this regard because it is corroborated by the Landlord's photographs. In my view the dirt in the fridge is consistent with the extended use of a refrigerator and is not consistent with the Tenant's speculation that this dirt was caused by the new occupants. As the refrigerator should have been cleaned prior to the end of the tenancy, I find that the Landlord is entitled to compensation for cleaning the refrigerator.

I find that the kitchen floor did not require cleaning at the end of the tenancy. I favour the female Tenant's testimony over the female Landlord's testimony in this regard because it is corroborated by the Tenant's photographs and I find it entirely possible that the dirt shown in the Landlord's photographs was tracked in after this tenancy ended. As the Landlord has failed to establish that the kitchen floor required cleaning, I find that the Landlord is not entitled to compensation for cleaning the floor.

On the basis of the undisputed evidence presented at the hearing and photographs #8 and #9, I find that the floor of the furnace room and a sill in the bedroom required cleaning. As these areas should have been cleaned prior to the end of the tenancy, I find that the Landlord is entitled to compensation for cleaning these areas.

I find that the bathroom did not require cleaning at the end of the tenancy. I favour the female Tenant's testimony over the female Landlord's testimony in this regard because it is corroborated by the Tenant's photographs and I find it entirely possible that the dirt shown in the Landlord's photographs accumulated after this tenancy ended. As the Landlord has failed to establish that the bathroom required cleaning, I find that the Landlord is not entitled to compensation for cleaning the bathroom.

On the basis of the photograph submitted in evidence by the landlord I find that the washing machine was left in reasonably clean condition, albeit it is not pristine. As the *Act* only requires a tenant to leave the rental unit in reasonably clean condition, I find that the Landlord is not entitled to compensation for cleaning the washing machine.

On the basis of the cleaning receipt submitted in evidence, I find that the Landlord paid \$120.00 to clean the rental unit. I find that the Landlord is entitled to compensation for the money paid to clean the rental unit, with the exception of the cost of cleaning the bathroom, the kitchen floor, and the washing machine. Although it is difficult for me to determine how much of the \$120.00 cleaning bill was for cleaning these particular areas, I find it reasonable to reduce the cleaning bill by \$30.00 for these areas. I therefore find that the Landlord is entitled to compensation, in the amount of \$90.00, for cleaning.

In determining cleaning costs I placed little value on the text message in which one of the new occupants stated he did not think the female Witness for the Landlord cleaned the unit. I find it entirely possible that this cleaning could have occurred with his knowledge, given the close relationship between the Landlord and the new occupant(s).

I find that the Landlords application has merit and I find that the Landlord is entitled to recover a portion of the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I find that the Landlord is entitled to recover the \$50.00 the Landlord would have been obligated to pay if the Landlord had claimed compensation under \$5,000.00. As the amount of the Landlord's claim is not supported by my findings, I find that the Landlord is not entitled to compensation for the \$100.00 fee that is payable for claims exceeding \$5,000.00.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$140.00, which is comprised of \$90.00 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$140.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province 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 13, 2012.

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Residential Tenancy Branch