



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

Tenant C. M. did not attend the hearing. The landlord provided affirmed testimony that on December 22, 2011, he served C.M. at the same address as tenant S.B., via registered mail to the forwarding address given by the tenants on August 9, 2011. A copy of the Canada Post receipt and tracking number were provided as evidence of service. Tenant S.B. confirmed that C.M. continues to reside with him at the same address; therefore, I found that C.M had been served with Notice of this hearing.

The landlord named a third respondent on the application; however, this individual was not a respondent but a different tenant, not linked to this tenancy. Therefore, the application was amended to remove respondent C. B.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damage in the sum of \$3,298.10?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on December 1, 2008, rent was \$1,600.00 per month, due on the first day of each month. The tenancy ended on July 15, 2011. A condition inspection report was completed at the start of the tenancy. A copy of the tenancy agreement and the move-in condition inspection report was supplied as evidence. There had been 3 co-tenants; only 2 of whom were named as respondents.

The landlord has made the following claim:

Carpet cleaning	392.00
Cleaning	450.00
Paint and wall repairs	500.00
Dishwasher door damage	162.09
Change locks	179.20
Cabinet damage	1000.00
Photographs	64.91
<b>TOTAL</b>	<b>3198.20</b>

Invoices were supplied for all items, with the exception of the cabinet and labour, paint supplies charged by the landlord.

The parties disputed the events that occurred at the end of the tenancy; the landlord testified it took the tenants 10 days to vacate, the tenant stated they had vacated on July 16, 2011. The tenant had talked with the male landlord who told him his spouse was at the rental unit. He then called his co-tenant, who went to the home to view it with the landlord. The landlord and the co-tenant went through the home together but a final inspection report was not completed and neither party signed the inspection report. The landlord stated that as the tenant refused to sign the report; however the landlord did not fill in the report.

The tenants were willing to complete further cleaning but the landlord denied them the opportunity and they said they had new occupants moving in; the tenants believe the landlord did not have new occupants available.

The move-in condition inspection indicated that the carpets in the living room, master bedroom and bedroom had stains and that the furnace room was dusty; new carpet was to be installed in the entry; otherwise the report indicated all other items were in good condition.

The landlord supplied 118 photographs of the unit, taken on July 18, 2011, as evidence of the condition of the home at the end of the tenancy.

The landlord had the carpets cleaned; as the entry stairs had not been done and the balance of the carpets were not clean. The tenant stated that he rented a cleaner from

Rona and did the carpets himself; with the exception of the stairs. The photographs showed stains that were referenced at the start of the tenancy; evidence of the carpet cleaning machine having been used was apparent. The carpets were ten to twelve years old.

The stove was approximately 8 years old by the time the tenancy ended; the landlord stated it was so dirty that it and stove hood were replaced. The cleaning invoice indicated that the items were too dirty to be cleaned. The photographs showed a dirty warmer drawer, an oven that appeared to have ash from the self-cleaner, dark stains around the door; dirt under the stove-top rings, rust on the stove-top rings; the hood had not been cleaned as it was covered in what appeared to be grease. The July 18, 2011, invoice indicated that the stove and hood were purchased via a popular web site; the invoice was produced by the individual who sold the items.

The photographs showed window sills that required cleaning; wall switches that were dirty; dirty woodwork; a dusty light fixture and bathroom tiles. The majority of the photographs were close up views. A July 20, 2011, invoice, paid by cash, indicated that the whole house was cleaned at the cost of \$450.00.

A photograph of some wall damage in several areas and one small hole were submitted. An invoice for the cost claimed was not supplied; the landlord testified he completed these repairs and painting himself and has charged for his time. The unit was last painted in early 2009.

The dishwasher door was dented, just below the control panel. On December 13, 2011, the landlord purchased a new door panel.

The landlord had given the tenants 3 sets of keys and received only 1 set at the end of the tenancy. An invoice dated July 16, 2011, was supplied as evidence of rekeying for the entrance, garage and for the cost of 4 keys; plus the service call.

A photograph of the wood cabinet indicated it had been burned; the landlord will need to replace the whole unit, as it is not possible to match the repair to the original wood. The landlord has been told this will cost \$1,000.00.

The tenant cleaned the stove inside and out and had used the self-cleaner, which left ash inside. He vacuumed the ash, scraped the stove in an attempt to clean it.

The tenant did not recall seeing the damage to the dishwasher door and did not know how the burn mark was caused to the cabinet. The tenant did return his set of keys but did not know if the co-tenant returned his keys.

The tenant admitted that the unit might have some deficiencies, but that they did their best to clean the unit. If the landlord had agreed to allow them to complete additional cleaning, they would have done so.

The tenant did not dispute the areas of drywall that needed repair and stated if he were renting out the unit he would paint it as a result of wear and tear from a 3 year tenancy.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

Section 37(2) of the *Act* provides:

*(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.*

The *Act* also requires a landlord to give a tenant at least 2 opportunities to complete a final inspection; the final opportunity must be in writing. This did not occur. The parties did meet, but the landlord did not complete the inspection report, as she and the tenant disagreed on the state of the unit.

The Regulation provides:

- 21** *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

Therefore, the landlord must, on the balance of probabilities, prove that the tenants did not comply with section 37(2) of the Act.

The tenant has confirmed that there may have been some deficiencies in the rental unit; the stairs had not been cleaned, painting was required and somehow the cabinet was damaged. The tenant could not be certain that all keys were returned to the landlord.

Residential Tenancy Branch policy suggests a useful lifespan of 10 years for carpet. As the carpets in this unit were twelve or thirteen years old, I find they were beyond their useful lifespan. However, the landlord has chosen to clean them and in the absence of effort by the tenant to clean the stairs I find the landlord is entitled to a nominal amount for carpet cleaning in the sum of \$50.00.

In relation to the stove and hood, the suggested lifespan for a stove is fifteen years. The hood did require cleaning, but the photographs showed only some grease on the hood. Even when I consider the note included on the cleaning invoice, I find it difficult to accept that the stove was so dirty it could not be cleaned; there were no pictures of the interior of the stove; only the door and top. The stove top rings appeared to be old and rusty but there was dirty under the rings. The appliances were approximately 8 years old and in the absence of evidence that they were inoperable I find that the claim for replacement is dismissed.

In relation to cleaning, the photographs submitted by the landlord indicated that window sills were dirty, and that the bath tiles required cleaning. Many of the photographs were close-ups of the carpet and window sills. From examining the photographs I find that there was a need for washing of wood work, bathroom tiles, window sills, door jambs, switch plates, the stove, stove hood and fixtures; therefore, as the invoice supplied showed no rate of pay or hours of cleaning completed, I find, on the balance of probabilities that the landlord is entitled to a portion of the cleaning costs claimed in the sum of \$250.00.

I find that there was damage caused to the drywall that was beyond normal wear and tear and that the landlord is entitled to a nominal amount for his own labour in the sum of \$100.00.

I find that the dishwasher was damaged during the tenancy; this item was not shown as damaged on the inspection report completed at the start of the tenancy. Therefore, I find that the landlord is entitled to replacement cost in the sum of \$162.09, as supported by the verification of the expense.

As the tenant could not say if the keys were all returned by his co-tenants, I find that the landlord is entitled to the re-keying costs supported by the invoice, in the sum of \$179.20.

In relation to the cabinet damage, I find that the damage was not present at the start of the tenancy and that, on the balance of probabilities; either the tenants or a guest of the

tenants caused this damage. In the absence of verification of the cost I find the landlord is entitled to a nominal amount in the sum of \$50.00.

	Claimed	Accepted
New oven and hood	450.00	0
Cleaning	450.00	250.00
Paint and wall repairs	500.00	100.00
Dishwasher door damage	162.09	162.09
Change locks	179.20	179.20
Cabinet damage	1000.00	50.00
Photographs	64.91	0
<b>TOTAL</b>	<b>3198.20</b>	<b>791.29</b>

The claim for photographs is dismissed as this is a cost that does not form a direct breach of the Act; return of filing fee costs are meant to reflect the cost associated with submitting the application.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The balance of the claim for compensation is dismissed.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$841.29, which is comprised of damage to the unit 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 in the sum of \$841.29. 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: March 08, 2012.

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Residential Tenancy Branch