



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MND, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution for a monetary order for damage to the rental unit and unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

This month to month tenancy began on March 27, 2010, ended on December 15, 2011, monthly rent was \$1450.00 and the tenant paid a security deposit of \$725.00 on or about March 17, 2010.

The landlord's monetary claim is \$1788.66, which is comprised of \$313.24 for carpet cleaning, \$495.42 for fuel tank deficiency, \$155.00 for deodorizing of the carpets, \$275.00 vacuuming of pet fur from the air vents, \$400.00 for yard work and \$150.00 for shelving replacement.

The landlord's relevant evidence included a print out of a tank dip for the fuel tank prior to the tenancy starting, dated February 1, 2010, a print out of a tank dip for the fuel tank at the end of the tenancy, dated December 16, 2011, an invoice from a landscaping company regarding the deodorizing of the carpet, email communication between the tenant and the landlord's agent, the tenancy agreement, and an invoice from a carpet cleaning company.

The tenant's relevant evidence included 49 photographs of the rental unit, an extensive amount of email communication between the parties, a copy of an invoice signifying the purchase of \$300.00 of fuel, documentation of two carpet cleanings, a copy of a photo showing a cut tree in the back yard, and the tenancy agreement.

There was no move-in or move-out condition inspection report, as confirmed by the landlord's agent.

In support of her application, the landlord's agent testified to the following:

**Carpet cleaning**-The landlord's agent stated that the pet odour was so pervasive at the end of the tenancy, that even though the tenant steam cleaned the carpet, it was necessary to hire a professional carpet cleaning company to provide further cleaning.

The agent submitted that the tenant was allowed two cats in the rental unit; however during the tenancy the tenant acquired a dog.

Upon query, the landlord stated that the carpet was 6 years old and that previous tenants lived in the rental unit with their pets.

In response, the tenant submitted that she had the carpet cleaned twice at the end of the tenancy and left the carpet clean and in the same standard upon which she received it. The tenant submitted that she did notice pet/urine smells when she moved into the rental unit.

**Fuel tank deficiency**-The landlord's agent stated that the oil tank had been supplied prior to the tenancy starting and that the tenant did not leave the oil tank with the same amount of oil at the end of the tenancy. The agent stated that the landlord was not responsible for the supply of heating and therefore the tenant was obligated to re-stock the fuel tank to the original amount.

In response, the tenant acknowledged that the landlord was not responsible for the heating fuel during the tenancy; however the tenant testified that she had inquired of the landlord after the tenancy to substantiate the amount for which she was responsible, with no response.

The tenant pointed out that the fuel tank reading printout supplied by the landlord showed the amount of oil two months prior to the tenancy starting. The tenant stated that although she was never informed as to the starting fuel tank amount, she had \$300.00 of oil placed into the tank on December 3, 2011.

**Deodorizing the carpet**-The landlord's agent submitted that the professional steam cleaning by both the tenant and the landlord did not fully remediate the pet/urine smell in the carpet. As such the landlord was required to provide further deodorizing of the carpet.

The landlord's witness, the owner of a company providing home repair/property maintenance services, attended the rental unit after the tenancy and confirmed that the carpet had a pet/urine smell, which was never fully remediated. The witness stated that he recommended to the landlord that the carpet be removed.

Upon query, the landlord's witness agreed that he had not attended or viewed the rental unit and property prior to this tenancy starting.

In response the tenant submitted that she had the carpet cleaned twice and that as a tenant, she was not responsible for other people's perception of smell. The tenant also submitted that her cats had ample litter boxes around the rental unit for their use.

The tenant submitted that some carpet in front of the washing machine appeared to be damaged by a previous pet.

**2<sup>nd</sup> vacuuming for removal of pet fur from the vents**-The landlord submitted that due to the tenant's pets, a large amount of pet fur collected in the air vents, which required additional vacuuming.

The landlord's agent confirmed there was no invoice/receipt entered into evidence for the 2<sup>nd</sup> vacuuming.

The landlord's witness confirmed that he viewed the pet fur and that the accumulation was so extensive, it was necessary to remove the collected fur.

Upon query, the witness agreed that he had not attended or viewed the vents prior to the start of the tenancy.

In response, the tenant submitted that she was not aware she was required to clean the air vents, located along the ceiling of the basement. The tenant also pointed to her photographic evidence, which showed the sheet metal pulled down, which possibly allowed for unfiltered air through the air vents.

**Yard remediation**-The landlord submitted that the yard was required to be remediated due to the damage by the tenant's dog. The damage included holes and other turf damage.

The landlord's agent confirmed there was no invoice/receipt entered into evidence for the yard remediation.

The landlord's witness confirmed yard damage and that he had not viewed the yard prior to the tenancy beginning.

In response, the tenant stated that the yard was a consistent issue with the landlord, as the landlord's provided a non-working lawnmower. Despite this, the tenant denied there

was damage in the yard and pointed to her photographic evidence of the yard at the end of the tenancy.

**Shelving replacement**-The landlord's agent stated that the tenant removed the shelving in one of the closets and did not replace it. The agent stated that the shelving has to be replaced as there is no hardware replacement available.

The landlord's agent confirmed that the shelving had not been replaced.

In response, the tenant submitted that she informed the landlord at the start of the tenancy that the closet was not deep enough to hang clothes and that she was removing the shelving for storage.

The tenant stated that she left the shelving and hardware in the rental unit and that she has seen the inexpensive hardware replacement in stores recently.

Upon query, the tenant stated that she gave her forwarding address three times to the landlord, first on the last day of the tenancy, December 15, 2011, then when she dropped off the note to the landlord and then in an email on December 26, 2011. The tenant stated that landlord responded to this email, as shown by her evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to claim against the

tenant's security deposit for damage. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, or evidence that the vents had been cleaned prior to the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I therefore **dismiss without leave to reapply** the landlord's claim for damages, including carpet care for \$313.24, carpet deodorizing for \$155.00, power vacuuming for \$275.00, yard repair for \$400.00 and shelving replacement for \$150.00.

Even had I not dismissed the landlord's claim based upon the failure to provide condition inspections or the reports, I would still make the decision to dismiss the landlord's claim as I was persuaded by the landlord's witness' testimony that he had not viewed the rental unit prior to the tenancy beginning and the landlord's admission that pets had resided in the rental unit during past tenancies, which caused me to question whether the tenant was responsible for any of the claimed damages.

I was further persuaded by the landlord's email transmission to the tenant, dated December 16, 2011, the day after the end of the tenancy, that the rental unit "looks good," which caused me to further doubt the tenant's liability and responsibility.

I also considered that the landlord failed to provide proof of an expenditure for a re-vacuuming of the vents, yard repair, and shelving replacement, thereby failing to meet the third step in her burden of proof.

In relation to the landlord's claim for a fuel deficiency, while I accept that the tenant was responsible for provide fuel for the oil tank for heating, I find that the landlord has failed to substantiate the amount of fuel for which the tenant was actually responsible at the end of the tenancy. In reaching this conclusion, I find that the landlord did not have fuel reading on the day or at least the day before the tenancy began, which would show the amount of fuel used by the tenant. Rather the landlord showed the fuel reading for almost two months prior to the tenancy.

I therefore find that the landlord has failed to meet step 3 of her burden of proof and **dismiss without leave to reapply** the landlord's claim for fuel tank deficiency.

Due to the above, I **dismiss** the landlord's application, **without leave to reapply**.

As the landlord's application is dismissed, I do not find she is entitled to recovery of the filing fee.

Under authority of Section 67 of the Act, I **direct** the landlord to return the tenant's security deposit in the amount of \$725.00 forthwith and I grant the tenant a monetary **order** in the amount of **\$725.00**.

I am enclosing a monetary order for \$725.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a monetary order in the amount of \$725.00.

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 12, 2012.

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Residential Tenancy Branch