



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution for a monetary order for loss of rent revenue and for money owed or compensation for damage or loss, authority to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee for the application.

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 submission requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### **Preliminary Issue:**

The parties were previously in dispute resolution on the tenants' application, which resulted in a Decision on January 23, 2012, in favour of the tenants, granting them a monetary order for \$99.55 for light bulb replacements and the filing fee.

The landlord acknowledged not having paid the tenants the amount listed in the monetary order.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order under sections 67 and 72 of the *Residential Tenancy Act* (the "Act"), for authority to retain the tenants' security deposit and pet damage deposit and to recover the filing fee?

### Background and Evidence

This tenancy ended on December 31, 2011. The landlord withheld the amount of \$539.38 from the tenants' security deposit and pet damage deposit, and returned the balance.

The landlord's monetary claim is as follows:

Amount withheld from rent	\$319.15
Electrician costs	\$75.04
Electrician costs	\$76.16
Light bulbs	\$18.23
Filing fee	\$50.00
<b>TOTAL</b>	<b>\$639.38</b>

#### **Amount withheld from rent-**

The landlord stated that in October 2011, the tenants withheld from their rent payment the amount of \$319.15 for paint costs and light bulbs. The landlord stated that she agreed to pay for a gallon of paint, but never agreed to pay for the painting costs submitted by the tenants, as the tenants elected to perform the painting, which she did not believe was necessary. In addition, the landlord stated that she agreed to pay for two light bulbs.

The landlord stated that as a result of agreeing to pay for these items, she sent the tenants a cheque in the amount of \$100.00.

The tenants submitted that due to the poor conditions of the walls at the start of the tenancy, the parties discussed and the landlord agreed to pay for the costs of the paint, which was at least 400 square feet. The tenants stated that the amount of paint needed was 2 gallons and 1 litre, which totalled \$242.08.

The tenants also submitted that due to the large number of light bulbs which did not function at the start of the tenancy, the cost to replace was \$77.07.

The tenants submitted, and the landlord agreed, that they have not cash the \$100.00 cheque from the landlord and in fact, it was returned.

#### **Plumber costs-**

The landlord submitted that the bathtub drain was in "perfect condition" at the start of the tenancy, and therefore the costs of the plumber to remove a hair blockage was due to the negligence of the tenants.

When questioned, the landlord agreed that the drain was not tested during the move-in inspection, but would attribute her former tenants' high standard of living to proof of the properly functioning drain at the start of the tenancy.

The tenant responded and stated that the drain was not working properly from the start of the tenancy, which they addressed themselves for a long period of time, by plunging

and other methods. However, when the water began to collect in the tub without draining, it was necessary to call the landlord.

### **Electrician costs-**

The landlord submitted that at the tenants' request, she had an electrician attend the rental unit to address a power outage, for which the tenant claimed the breaker would not re-set. The landlord stated that the electrician attended the rental unit and found no faulty breakers and that they were re-set with no problem.

The landlord contended that this electrician also discovered that the tenants were not using the earlier installed light switch, but instead the dimmer, when turning on the energy saving lights, which the tenants had been advised earlier would cause damage.

After the tenancy ended when she discovered that the bathroom lights did not turn on, according to the landlord, she had an electrician attend the rental unit, who informed the landlord that the bathroom switch was not functioning due to the alleged misuse of the switch.

The landlord agreed that the bathroom lights had not been tested during the move-out inspection.

Due to the above, the landlord contended that the tenants' negligence caused an unnecessary electrician's expense.

The tenants contended that there were problems with the electrical wiring from the beginning of the tenancy, which included their daughter not having an overhead light in her bedroom for over a month due to the landlord's delay in having it repaired.

The tenants stated that before they called the landlord to inform them of the power outage, they had tried without success to re-set the breakers.

The tenants denied any negligence or misuse of the dimmer switch and submitted that the house was very old and the wiring was outdated. The tenants also submitted that they had attempted to repair or remediate any electrical problems themselves prior to contacting the landlord. This included the male tenant replacing a light fixture with the landlord's permission, only to have the landlord replace that fixture with a cheaper one, not compatible with a dimmer switch.

### **Light bulb replacement-**

The landlord stated that although she did not notice the bathroom lights being out during the final inspection, she is entitled to be reimbursed this amount due to the alleged misuse by the tenants of the dimmer switch.

The tenants responded, submitting that during the final inspection they reminded the landlord of the incompatible light fixture, which had been replaced during the tenancy, and suggested she install a regular light fixture.

The landlord's relevant evidence included receipts for the electrician and light bulbs, and electronic communication between the parties from throughout the tenancy.

The tenant's relevant evidence included painting costs receipts, electronic communication between the parties and the condition inspection report.

### 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.

### **Amount withheld from rent (October 2011)-**

In the previous dispute resolution, the Dispute Resolution Officer ("DRO") found that the circumstances surrounding the painting of the rental unit by the tenants formed a separate agreement and fell outside the jurisdiction of the Act.

Additionally, under section 26 of the Act, a tenant is not permitted to withhold rent, or any portion thereof, with the legal authority to do so. Under these circumstances, I do not find that the tenants have proven a legal right to withhold rent.

The landlord agreed that she would and did reimburse the tenants the amount of \$100.00 for paint and light bulbs. However the parties agreed that this cheque was returned to the landlord.

I therefore find that the landlord has established a **monetary claim** for unpaid rent for October 2011, in the amount of **\$219.15** (\$319.15 claimed less \$100.00 agreed to by the landlord).

### **Plumber costs-**

I find the landlord submitted insufficient evidence to prove that the tenants' use of the bathtub caused the hair clog in the drain. In reaching this conclusion, I was persuaded by the landlord's admission that the drain was not checked at the beginning of the tenancy and I find the tenants' testimony that the drain was not working properly from the start of the tenancy to be credible.

I do not accept the landlord's argument as I do not find it reasonable that proof of the properly working drain was someone else's "high standard of living."

As I find the landlord submitted insufficient evidence of negligence by the tenants, I **dismiss** the landlord's monetary claim for \$100.80, without leave to reapply.

### **Electrician costs-**

After a review of the evidence and contradictory testimony, I find that the landlord has submitted insufficient evidence of the tenants' negligence and therefore responsibility in paying for electrician costs. In reaching this conclusion, I was persuaded by the landlord's admission that she did not know the age of the electrical wiring, but attributed the age to the late 1980's.

The Residential Tenancy Branch Policy Guideline states that the useful life of electrical inside wiring and panel boxes is 15 years. I therefore find that the wiring had reached and surpassed its useful life, in other words, the wiring was fully depreciated, and that any repair, without proof of negligence, would be the responsibility of the landlord, not the tenants.

Additionally, the landlord presented a version of events and the tenants presented a different version of events, which I find to be equally plausible. I therefore find that contradicted, disputed verbal testimony, without more, does not sufficiently meet an applicant's burden of proof.

As I find the landlord submitted insufficient evidence to substantiate that the tenants were negligent and therefore responsible for any electrical costs, I **dismiss** the landlord's monetary claim for \$75.04 and \$76.16, without leave to reapply.

### **Light bulb replacement-**

The landlord admitted that she did not notice that the light bulbs were not working during the final inspection with the tenants and the tenants responded by informing the landlord there was a problem with the bulbs.

I find I cannot reward the landlord for her failure to notice an obvious defect during the inspection and her failure to so notice made me question the landlord's motivation.

I find the landlord submitted insufficient evidence to meet steps 1 and 2 of her burden of proof and I dismiss her claim for \$18.23, without leave to reapply.

**Filing fee-**

I find partial merit in the landlord's application and I therefore award her partial reimbursement of her filing fee, in the amount of \$25.00.

I find the landlord has established a **total monetary claim** of **\$244.15**, comprised of \$219.15 for withheld rent from October 2011 and \$25.00 for a partial filing fee.

I allow the landlord to retain the amount of her monetary claim of \$244.15 from the amount she retained from the tenants' security and pet damage deposit, that being \$539.38, and direct her to return the balance to the tenants, in the amount of \$295.23.

Under authority of Section 67 of the Act, I grant the tenants a monetary **order** in the amount of **\$295.23**.

I am enclosing a monetary order for \$295.23 with the tenants' 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 has established a monetary claim in the amount of \$244.15, which she is authorized to deduct from the tenants' security and pet damage deposit.

The landlord is directed to return to the tenants the balance due from their security and pet damage deposits, in the amount of \$295.23.

The tenants are granted a monetary order in the amount of \$295.23.

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 19, 2012.

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Residential Tenancy Branch