



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 28, 2012, the tenant did not attend. The landlord provided affirmed testimony that the documents were sent in that manner on that date, and provided a tracking number to substantiate that testimony. The landlord also testified that the evidence provided by the landlord was also served on the tenant by registered mail on May 18, 2012 and provided a tracking number for that package. The landlord stated that the Canada Post website revealed that the Application and notice of hearing were picked up by the tenant on March 29, 2012 and the evidence was picked up on May 22, 2012.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 20, 2010 and ended on August 31, 2011. Rent in the amount of \$1,100.00 per month was payable on the 1<sup>st</sup> day of each month, although no written tenancy agreement exists, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 and no pet damage deposit was collected.

The landlord further testified that a move-in condition inspection report was completed at the outset of the tenancy, and provided a copy for this hearing.

The landlord provided a copy of a Decision made by the Residential Tenancy Branch following a hearing that took place by conference call on August 16, 2011. The resulting order included an Order of Possession and an order permitting the landlord to keep \$50.00 of the security deposit for recovery of the filing fee for that application.

On August 16, 2011 the tenant was personally served with a faxed copy of the Order of Possession which contained an effective date of vacancy of August 31, 2011. At that time, the landlord told the tenant that the landlord would return on September 1, 2012 at 9:00 a.m. to complete the move-out condition inspection report. The landlord returned to the rental unit on August 31, 2011 and the tenant had not yet commenced packing and there was no evidence that the tenant was moving. The landlord was met with profanity and abuse by the tenant, so the landlord left and returned again on September 1, 2011 at 9:00 a.m. and the tenant and the tenant's furniture was gone. The landlord did not complete a move-out condition inspection report.

On August 31, 2011 the landlord filed a Notice of Claim in the Provincial Court of British Columbia (Small Claims Court) claiming damages as against the tenant in the amount of \$6,500.00 and \$216.00 in costs. A copy of that document was provided for this hearing along with a Settlement Conference Record dated March 23, 2012. The Settlement Conference Record shows that the matter was adjourned generally and that the landlord had told the Court that the Residential Tenancy Branch told the landlord to go to Provincial Court. The landlord also provided a document for this hearing stating that total costs for materials to clean, repair, and paint amount to \$1,182.05 and \$450.00 for the landlord's time cleaning and \$180.00 for the landlord's time to obtain the needed materials, for a total of \$1,712.05. The landlord testified that the Provincial Court Judge gave the landlord a release of personal information from the small claims file including a statement of finances from the tenant, which is how the landlord obtained a new address for the tenant, however a copy of that document was not provided for this hearing. The landlord testified that the tenant has not provided the landlord with a forwarding address in writing.

The landlord testified that the kitchen faucet would not turn off after the tenant had vacated the rental unit. The faucet was new before the tenant moved in, although no evidence of that has been provided. The move-in condition inspection report states that the countertops and sink were "clean/okay" and "excellent" but does not mention the faucet, while the notation beside the dishwasher says "clean/okay" and "clean/new." The landlord has provided a receipt in the amount of \$39.98 for a new faucet, and also includes mini rollers for \$4.98, a 4pc trim set for \$4.88, a button knob for \$2.99, a bottle for \$3.97, a bag fee of \$.05 and \$6.82 HST, for a total receipt of \$63.67. The landlord stated that the mini rollers were required for re-painting doors. The trim on the closet doors was scratched and the baseboard was damaged. Also, the trim set on the cupboard doors were damaged and knobs had been removed. The landlord bought the spray bottle for dispensing cleaning solution.

The walls in both bedrooms were stained beyond cleaning. The landlord testified that one gallon of paint was bought to re-paint the rental unit and provided a receipt from The Home Depot in the amount of \$39.84 including taxes. The condition inspection report shows that the master bedroom had new paint at the beginning of the tenancy.

A Wal-Mart receipt was also provided for proof of purchase of cleaning supplies. A number of personal items also appear on that receipt, and the landlord testified that out of the receipt amount of \$71.80 the landlord claims \$56.59 for cleaning supplies and \$7.65 for taxes. The receipt includes purchase of paper towels, degreaser, Pinesol, Windex, Comet, SOS Pads, dish soap, sponges and Septo Bac, which is a cleaner for the toilet. The landlord testified that the toilet was left totally foul by the tenant. The landlord also provided a receipt showing that a cleaning person was paid \$300.00 for 15 hours of cleaning on September 2, 3 and 6, 2011, and that all cleaning products were provided by the owner of the home.

The landlord also provided a receipt from The Home Depot in the amount of \$36.88, being \$4.98 for "Blank PLT" which the landlord testified is a weed killer; \$15.99 for "Flushmount" which the landlord testified is a light fixture in the master bedroom which was broken during the tenancy and rendered inoperable; and \$11.96 for more sponges.

A Canadian Tire receipt in the amount of \$7.59 has also been provided which the landlord testified was \$3.99 for oven cleaner and \$2.79 for replacing light bulbs which were missing at the end of the tenancy, and \$.81 for taxes.

Another receipt from The Home Depot has been provided in the amount of \$316.46 for hardwood. The landlord testified that the hardwood floors in the hallway, living room and dining room were new at the commencement of the tenancy and had been replaced in July, 2010, although no evidence of that has been provided. The move-in condition

inspection report shows that floor coverings in the living room and dining room were “N/A” and were excellent in the hallway at the commencement of the tenancy. The landlord testified that on September 1, 2011 the living room looked like someone skated on it with ice skates; the floor was gouged and destroyed. Someone had sanded the floor which removed the shine and the landlord had to replace an area of 10 feet by 12 feet.

Another receipt from the Home Depot has been provided in the amount of \$507.76, being \$170.00 for a handleset, which the landlord testified was for the front door handle. The tumbler was taken apart and it appeared that glue was placed inside; it was gummed up with adhesive or some other product and was not repairable. The door also had a deadbolt which was also damaged during the tenancy and the receipt includes \$178.00 which the landlord testified was for the new deadbolt. The landlord had to buy identical products because the holes were already in the door. The receipt also includes \$39.99 for “semi-flush” which the landlord testified was to replace a broken globe over a light in the second bedroom. Also included in the receipt is a cost of \$59.99 for replacing the filters in the water dispenser in the fridge. The dispenser did not work at the end of the tenancy, and the move-in condition inspection report states that the fridge was “clean,” but makes no mention of a water dispenser or its condition. The final item on the receipt is \$5.38 for 2 keys; the landlord testified that the keys for the rental unit were never found by the landlord.

Another receipt from Canadian Tire has been provided which includes \$8.99 for AA tire foam, which the landlord testified is to clean the rubber around the fridge door; \$9.99 for steel wool; and \$14.99 for “YW 3000 Sq.Ft.” which the landlord had difficulty explaining, but guessed that it is a plug-type of air freshener.

The landlord also provided an invoice in the amount of \$500.00 dated September 1, 2011 for carpet cleaning and kitchen tile and grout cleaning. The invoice contains a notation: “carpets were extremely soiled took 3 cleanings to look decent – had dirt, urine, evidence of feces and hair on carpet – took 4 hours to clean.” The landlord testified that the tenant had a couple of dogs and weren’t supposed to have any pets.

Also provided is a typed document said to be an explanation and invoice by a handyman for repair work in the amount of \$615.00.

The landlord has also provided a receipt dated September 15, 2011 in the amount of \$209.44 for replacing the patio screen, cracked glass and cracked kitchen glass. The landlord testified that the screen had a hole in it, and 2 windows, one in the kitchen and one in the basement bedroom were broken.

Another receipt provided by the landlord is an invoice dated September 23, 2011 in the amount of \$359.63 for delivery – rubbish removal; furniture, shuffle recycling and dump fee. The invoice shows that the work was completed on September 4, 2011.

The landlord has also provided numerous photographs to illustrate the damage left to the rental unit at the end of the tenancy.

The landlord also claims \$120.00 for filing the Order of Possession in the Supreme Court. The landlord wanted to have a sheriff enforce the Order as soon as possible. A copy of the Writ of Possession and receipt for filing has been provided for that amount, and the document appears to have been filed with the Court on August 31, 2011.

The landlord also claims \$50.00 for the filing fee on Residential Tenancy Branch file number 770253, but agreed during the hearing that the amount was ordered on August 16, 2011.

The landlord also claims unpaid utilities in the amount of \$117.14 and provided a water bill from the Waterworks District for the rental unit dated August 24, 2011. The bill shows an opening balance of \$61.84 and current charges of \$55.30. The bill shows that the billing period is from July 1, 2011 to September 30, 2011 and the consumption period is from April 1, 2011 to June 30, 2011.

The landlord also claims \$156.00 for filing the Small Claims Notice of Claim and has provided a receipt to substantiate that claim, as well as a Wal-Mart receipt in the amount of \$67.20 which the landlord testified is a claim for printing the photographs.

### Analysis

Firstly, I find it difficult to believe that the Residential Tenancy Branch told the landlord to file a claim in Small Claims Court. The Residential Tenancy Branch has exclusive jurisdiction with respect to residential tenancy claims, and upon reading the Settlement Conference Record it appears that that was the information given to the Provincial Court Judge by the landlord. I find that the landlord incorrectly assumed that any damage claim would be heard in that Court, and the tenants cannot be held to paying for that incorrect filing. The landlord's application for recovery of small claims costs in the amount of \$216.00 is hereby dismissed.

The *Residential Tenancy Act* states that a landlord must provide a tenant with at least 2 opportunities to conduct a move-out condition inspection report. The *Act* further states that the landlord may complete and sign the report in the absence of the tenant if the landlord has offered the tenant at least 2 opportunities, as prescribed or the tenant has

abandoned the rental unit. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. The landlord in this case stated that the tenant was told that the move-out condition inspection report would be completed on September 1, 2011 at 9:00 a.m. but the tenant didn't show up. The regulations go into detail of how two opportunities are to be provided, including a notice in the approved form if the tenant is not available for the first offered date and time. There is no evidence before me that the landlord provided a second opportunity, and I accept the testimony of the landlord that when the landlord attended the rental unit on September 1, 2011 to complete the inspection, the tenant didn't show up and the landlord had no forwarding address, however, I cannot in the circumstances find that the tenant abandoned the rental unit; the landlord served the tenant with an Order of Possession on August 16, 2011 which was effective August 31, 2011. Further, the landlord did not complete a move-out condition inspection report at all and did not take the extra step of posting a final notice to conduct the condition inspection on the door of the rental unit. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The landlord testified that the tenant did not provide a forwarding address in writing but the landlord obtained an address for the tenant through the Small Claims documents, and I accept that testimony.

With respect to the damages claimed by the landlord, the landlord's right to make a claim damages is not extinguished. In order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

Further, any award for damages must not place the landlord in a better financial position than the landlord would be had the damage or loss not existed.

I have reviewed the photographs provided by the landlord and have compared them to the move-in condition inspection report. As a result of the evidence and testimony provided by the landlord, I find that the landlord has established the following claims:

- \$39.98 for kitchen faucet;
- \$4.98 for mini rollers;
- \$4.88 for the 4pc trim set;

- \$2.99 for the button knob;
- \$3.97 for a spray bottle;
- \$6.82 HST for that receipt;
- \$39.84 for paint;
- \$56.59 for cleaning supplies and \$7.65 for taxes;
- \$300.00 for cleaning;
- \$15.99 for “Flushmount light fixture in the master bedroom;
- \$11.96 for cleaning sponges;
- \$3.35 for taxes for that receipt;
- \$7.59 for oven cleaner and for replacing light bulbs;
- \$170.00 for a handleset;
- \$178.00 for a new deadbolt;
- \$39.99 for “semi-flush” to replace a broken globe over a light in the second bedroom;
- \$5.38 for 2 keys;
- \$47.20 for taxes for that receipt;
- \$8.99 for AA tire foam;
- \$9.99 for steel wool;
- \$2.28 for taxes for that receipt;
- \$500.00 for carpet cleaning;
- \$615.00 for handy-man repair work;
- \$209.44 for replacing the patio screen, cracked glass and cracked kitchen glass; and
- \$359.63 for removal and dump fee.

I find that the tenant is not responsible for the following claims:

- \$.05 for a bag fee - the landlord ought not to hold a tenant responsible for the landlord’s failure to supply a bag, and failed to mitigate this cost;
- \$4.98 for “Blank PLT” which the landlord testified is a weed killer – the move-in condition inspection report shows that the yard required watering at the beginning of the tenancy. I cannot find that the yard was in any different condition at the beginning of the tenancy than the condition of the yard in the photographs provided by the landlord, and in the absence of a written tenancy agreement, I cannot find that the tenant was responsible for weeds. The Residential Tenancy Policy Guidelines stat that a tenant is responsible for a reasonable amount of weeding if the tenancy agreement requires a tenant to maintain the flower beds;

- \$316.46 for hardwood – I find that the landlord has failed to establish that the hardwood contained no gouges at the beginning of the tenancy, and has therefore failed to satisfy element 2 in the test for damages;
- \$59.99 for replacing the filters in the water dispenser in the fridge – I find that the landlord has failed to establish elements 1 and 2 in the test for damages;
- \$14.99 for “YW 3000 Sq.Ft.,” the landlord could only guess that this item was for air fresheners;
- \$120.00 for filing the Writ of Possession – I find that the landlord failed to mitigate this cost; the landlord has no way of knowing whether or not this cost was necessary, and therefore, the tenant cannot be held responsible;
- \$50.00 for the filing fee on Residential Tenancy Branch file number 770253 – this cost was already awarded to the landlord to be taken from the security deposit;
- \$117.14 for the utility bill – in the absence of a written tenancy agreement, I find that the landlord has failed to establish that water wasn’t included in the rent;
- \$67.20 for photographs – Section 72 of the *Residential Tenancy Act* permits the director to order recovery of a filing fee, but does not include any other costs incurred for preparing for the hearing.

The order made on August 16, 2011 included an Order of Possession and an order permitting the landlord to keep \$50.00 of the security deposit for recovery of the filing fee for that application. Since the landlord has been partially successful with this application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. The landlord holds a security deposit in the amount of \$550.00 and I find that \$500.00 of that security deposit ought to be set off from the damages awarded above. The landlord will have a monetary order for the difference in the amount of \$2,202.49.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit remaining in the amount of \$500.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,202.49.

This order is final and binding on the parties and may be enforced.



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: May 31, 2012.

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Residential Tenancy Branch