



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

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

The Tenant advised that she was representing the other two Respondents named on the Landlord's Application for Dispute Resolution. The Landlord advised that she sent each of the Respondents a copy of the Application for Dispute Resolution by registered mail. The Tenant stated that she understands each of the Respondents received that mail.

The Landlord submitted documents to the Residential Tenancy Branch on April 30, 2012, copies of which were left in the lobby of the Tenant's residential complex on May 01, 2012. The Tenant acknowledged receipt of the Landlord's evidence on May 01, 2012; the Tenant declined the opportunity for more time to consider the evidence; and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on May 04, 2012, copies of which were mailed to the Tenant on May 02, 2012. The Tenant stated that this evidence has not been received. The evidence was not accepted as evidence for these proceedings and the Landlord declined the opportunity to request an adjournment for the purposes of relying upon this evidence.

The Tenant submitted documents to the Residential Tenancy Branch on May 03, 2012 copies of which were received by the Landlord on May 06, 2012. The Landlord declined the opportunity for more time to consider the 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 utilities; whether the Landlord is entitled to compensation for damage to the rental unit; whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether either party is entitled 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 on May 01, 2011; that they then signed a fixed term tenancy agreement for a term that began on October 01, 2011; that the Tenant paid a security deposit of \$700.00; that the tenancy ended on March 31, 2012; that the Tenant provided the Landlord with a forwarding address, in writing, on April 01, 2012; and that the Tenant provided the Landlord with a corrected forwarding address, in writing, on April 08, 2012.

The Landlord and the Tenant agree that the Landlord did not complete a condition inspection report when this tenancy began on May 02, 2011; that they did complete a condition inspection report on September 27, 2012 when they signed the fixed term tenancy agreement; that the Landlord and the Tenant jointly inspected the rental unit on April 01, 2012; that the Tenant refused to sign the report because they did not agree with the content of the report; and that the Landlord did not sign or date the report because the Tenant did not sign it.

The Landlord and the Tenant agree that the Tenant was required to pay a portion of the utility bills and that the Tenant currently owes \$184.98 for their portion of the Fortis BC bill and \$94.65 for their portion of the hydro bill.

The Landlord is seeking compensation, in the amount of \$151.20 for cleaning the rental unit. The Landlord contends the rental unit required cleaning at the end of the tenancy and the Tenant contends that the rental unit was left in reasonably clean condition at the end of the tenancy. The Tenant stated that the rental unit was not clean when the tenancy started as the Landlord was completing renovations and they had to clean after the renovations had been completed. The Landlord agrees that the renovations to the rental unit were not complete when this tenancy started, although she would not agree that any significant cleaning was required..

The Landlord submitted a CD which shows the condition of the rental unit at the end of the tenancy. The Tenant agrees that the photographs accurately reflect the condition of the rental unit at the end of the tenancy.

The Landlord has claimed compensation of \$370.00 for cleaning and damages. After reducing this amount by the cleaning claim of \$151.20, I find it reasonable to conclude that the remaining \$218.80 is for damages. The Landlord is seeking compensation, in the amount of \$150.00 for replacing the countertop. The Landlord stated that the countertop beside the kitchen sink was "swollen" which she speculates occurred when water leaked over the edge of the counter. The Tenant stated that she never noticed the swelling until the end of the tenancy; that she does not know how the damage occurred; that they did dishes in a normal manner; and that there was never an unusual amount of water on the countertop.

The Landlord is seeking compensation, in the amount of \$38.49, for repairing and painting three walls in one bedroom. The Landlord and the Tenant agree that the Landlord told the Tenant not to use nails to hang art and she recommended that the Tenant use picture hangers that attach to the wall with an adhesive substance. The Tenant stated that she did use the adhesive backed picture hangers, that the hangers did not properly adhere to the wall, and that she then used tacks to affix the adhesive hangers to the wall. The Landlord and the Tenant agree that a small amount of paint was torn from the wall when the adhesive hangers detached from the wall.

The Landlord is seeking compensation, in the amount of \$50.00, for replacing wainscoting above the kitchen counter that appears to have been damaged by moisture. The Tenant agrees this damage occurred during the tenancy but contends that it was normal wear and tear, as they did not misuse the kitchen area.

### Analysis

As the Tenant agreed that the Landlord is entitled to compensation for utility charges, in the amount of \$279.63, I find that the Landlord is entitled to compensation in this amount.

I find that some additional cleaning was required in the rental unit at the end of the tenancy. Although the Tenant does not agree that cleaning was required at the end of the tenancy, I find that the photographs submitted by the Landlord corroborate the Landlord's claim the cleaning was required. I also find that some cleaning was required at the start of the tenancy. Although the Landlord does not agree that cleaning was required at the start of the tenancy, I find that it is likely cleaning was required as cleaning is generally required even after minor renovations. Section 37(2) of the *Residential Tenancy Act (Act)* requires tenants to leave a rental unit in reasonably clean condition. Given that cleaning was required at the start of this tenancy and that the cleaning required at the end of the tenancy was not extensive, based on my review of the Landlord's photographs, I find that the rental unit was left in reasonably clean

condition in these particular circumstances. As the Tenant therefore complied with the Act, I dismiss the Landlord's claim for compensation for cleaning.

After hearing the statements of both parties regarding the damage to the countertop and after viewing the photographs of the countertop, I find that the Landlord submitted insufficient evidence to show that the Tenant damaged the countertop. In reaching this conclusion I was heavily influenced by the photographs submitted in evidence. While the two photographs do show an unusual shape to the countertop they do not, in my view, establish that the countertop was damaged as a result of misuse, as opposed to a flaw in the countertop, given that countertops are designed to withstand a reasonable amount of water and there is nothing to show that this countertop was subjected to an unreasonable amount of water. As the Landlord has failed to establish that the Tenant damaged the countertop, I dismiss the Landlord's claim for compensation to repair the countertop.

Residential Tenancy Branch Policy Guidelines stipulates that most tenants will hang pictures in their unit; that the landlord can establish rules on how this can be done, such as prohibiting adhesive hangers or insisting only picture hook nails be used; and that a tenant is not responsible for repairing damage to the walls if they tenant follows the landlord's reasonable instructions. On the basis of the undisputed evidence presented at the hearing I find that the walls were damaged as a result of the Tenant complying with the Landlord's directions to use adhesive hangers and the Tenant is not, therefore, obligated to repair that damage. I find that it was reasonable for the Tenant to subsequently use tacks to adhere the adhesive hangers to the wall, given that the adhesive hangers were not working and were causing more damage than would be caused by a tack. I therefore dismiss the Landlord's claim for compensation for repairing the damaged walls in the bedroom.

While I accept that the wainscoting above the kitchen counter was damaged by moisture during this tenancy, I find that there is insufficient evidence to establish that it was damaged by the neglect or misuse of the Tenant. In reaching this conclusion I note that wainscoting is a wood product that is not designed to withstand the amount of water that can reasonably be expected on a kitchen counter. I find that the amount of moisture damage to the wainscoting constitutes reasonable wear and tear for a wood product of this nature when it is installed adjacent to a counter top. As tenants are not obligated to repair damage caused by reasonable wear and tear, I dismiss the Landlord's claim for compensation for repairing the wainscoting.

Section 38(1) of the Act stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord did comply with section 38(1) of the Act, as the Landlord filed an Application for Dispute Resolution on April 16, 2012. As the Landlord received a forwarding address, albeit an incorrect one, on April 01,

2012, she was obligated to either repay the security deposit or make an application for dispute resolution claiming against the deposit by April 16, 2012.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I dismiss the Tenant's claim for the return of double the security deposit.

### Conclusion

As the Landlord has failed to establish that she is entitled to compensation for damages, I find that the Landlord's application has been without merit. I therefore dismiss the Landlord's claim to recover the filing fee for the cost of this Application for Dispute Resolution. In reaching this conclusion I note that the Tenant readily agreed to compensate the Landlord for the cost of utilities and that this portion of the dispute would likely have been resolved without the need for this hearing.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$279.63 from the Tenant's security deposit, as compensation for the utility charges the Tenant agreed is due. After deducting this amount from the security deposit, I find that the Landlord must pay the remaining \$420.37 to the Tenant and I grant the Tenant a monetary Order for this amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As I would have determined that the remainder of the security deposit be refunded to the Tenant even if the Tenant had not filed an Application for Dispute Resolution and the Tenant did not establish that the Tenant is entitled to the return of double the security deposit, I dismiss the Tenant's claim to recover the filing fee for the cost of this Application for Dispute Resolution.

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 07, 2012.

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Residential Tenancy Branch