



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MND, MNDC, MNSD, FF / MNDC, MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2011. Monthly rent of \$1,350.00 is due and payable on the first day of each month, and a security deposit of \$675.00 was collected. A move-in condition inspection report was completed with the participation of both parties on July 31, 2011.

A previous hearing was held in a dispute between these parties on March 27, 2012 with a decision issued by the same date (file # 789074). Pursuant to that decision an order of possession was issued in favour of the landlord effective March 31, 2012. It appears from the decision that the order of possession was issued as a result of the landlord's service of a 1 month notice to end tenancy for cause. A move-out condition inspection report was completed with the participation of both parties, and is dated April 2, 2012.

By cheque dated April 16, 2012, the landlord returned \$74.71 of the tenants' security deposit, retaining the balance of \$600.29 (\$675.00 - \$74.71).

## Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be access via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony of the parties, the various aspects of the respective claims and my findings around each are set out below.

### LANDLORD'S CLAIM:

Costs associated with registered mail: Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord's application is hereby dismissed.

Unpaid rent: I find that the documentary evidence and testimony in relation to whether or not the landlord's application includes compensation for unpaid rent for March and April 2012, is inconsistent. While the landlord has made reference on the application form under "Details of the Dispute" to "unpaid rent for March and April," calculations made by the landlord in relation to a claim on the tenants' security deposit reflect that no consideration was given to unpaid rent. Specifically, as noted above, by cheque dated April 16, 2012, the landlord returned \$74.71 of the tenants' original security deposit. The landlord's testimony on this matter during the hearing was somewhat vague.

In view of the conflicting evidence, I prefer the calculations undertaken by the landlord and the cheque issued by her to the tenants, over the reference to unpaid rent in her application, and I find on a balance of probabilities that the landlord has not applied for a monetary order as compensation for unpaid rent.

\$79.98: *two new lock sets (\$39.99 x 2)*. The parties presented conflicting testimony around this aspect of the application, and the involvement of a realtor and a lock box at the unit added to the complexity. The realtor was not present at the hearing to testify, and neither was there a written submission before me from the realtor. On a balance of probabilities I find that the landlord has established entitlement limited to **\$39.99\***, which is half the amount claimed.

\$20:00: *cash payment for repair to fence*. Based on the documentary evidence and testimony, I find there is insufficient evidence that the tenants were responsible for this damage and repair. Accordingly, this aspect of the claim is hereby dismissed.

**\$60.00\***: *cash payment for cutting the grass*. Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and provides in part as follows:

3. Generally, the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

I find that the grass was left uncut at the end of tenancy and that the landlord has therefore established entitlement to the full amount claimed.

**\$39.98**: *replacement of 2 battery operated smoke alarms*. On this matter too, there was conflicting testimony presented by the parties. Testimony touched on matters which included, but were not necessarily limited to, the uncertain working status of the smoke alarms at the start of tenancy, and whether or not the tenants had removed batteries from either or both of the smoke alarms during the tenancy. I find on a balance of probabilities that the landlord has established entitlement limited to **\$19.99\***, which is half the amount claimed.

**\$179.99\***: *replacement of missing extension ladder*. The tenants acknowledged removal and possession of the landlord's ladder, and they appear to have decided to retain it as collateral in the dispute with the landlord. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

**\$138.05\***: *pro-rated utility bill*. Based on the testimony of the parties, which includes reference to the specific provisions in the written tenancy agreement, I find that monthly rent does not include utilities and that the landlord has therefore established entitlement to the full amount claimed.

**\$20.00\***: *cash payment for disposal of discarded possessions*. Based on the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$50.00\***: *filing fee*. As the landlord has achieved more than a nominal measure of success with her application, I find that she has established entitlement to recovery of the full filing fee.

**Entitlement: \$508.02.**

---

TENANTS' CLAIM:

\$995.00: painting walls, steam cleaning carpets, extensive cleaning. In the absence of sufficient documentary evidence, and in the face of conflicting testimony from the parties, I find on a balance of probabilities that the tenants have failed to meet the burden of establishing entitlement to this aspect of the claim, and it is hereby dismissed.

\$1,350.00: aggravated damages. Residential Tenancy Policy Guideline # 16 speaks to "Claims in Damages." Despite what appear to be mutual feelings of animosity between the parties, following careful consideration of all the documentary evidence and testimony, I find there is insufficient evidence to support any entitlement to aggravated damages. This aspect of the tenants' application is, therefore, hereby dismissed.

\$50.00: filing fee. As the tenants have achieved only a nominal measure of success with their application, I find that they have established entitlement limited to **\$25.00\***, which is half the filing fee.

**Entitlement: \$25.00.**

Conclusion

Offsetting the respective entitlements, I find that the landlord has established net entitlement to \$483.02 (\$508.02 - \$25.00). I order that the landlord retain this amount from the security deposit of \$675.00.

The balance of the security deposit is \$191.98 (\$675.00 - \$483.02). As the landlord has already reimbursed the tenants in the amount of \$74.71, the net balance remaining for reimbursement to the tenants is \$117.27 (\$191.98 - \$74.71). Accordingly, I order the landlord to reimburse the tenants in the amount of **\$117.27**, and I hereby issue a **monetary order** in favour of the tenants to that effect.

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 29, 2012.

---

Residential Tenancy Branch