



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD and FF

This application was brought by the landlord on March 13, 2012 seeking a monetary award for rent for overholding, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposits in set off against the balanced owed.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

### Background, Evidence and Analysis

This tenancy initially began on February 1, 2011 under a one-year fixed term rental agreement set to end on January 31, 2012 and continued as a month to month tenancy until tenants gave notice on February 29, 2012 to vacate on March 31, 2012.

Rent was \$1,850 per month and the landlord holds a security deposit of \$925 and a key deposit of \$30 paid on or about February 1, 2011.

The tenancy agreement included a third tenant who left the rental unit in December 2011 following a physical altercation with the remaining tenants and who was not served in the present matter for want of a forwarding address. The named male tenant was a signatory to the agreement who did not reside in the rental unit, but is nevertheless liable for the claims by virtue of joint and several liability and/or as guarantor.

During the hearing, the submitted copies photographs, receipts and the move-out condition inspection report in support of her claims for damages.

The landlord claims and I find as follows:

**Rent for five days of overholding - \$308.35.** By written notice, the tenant was to vacate on March 31, 2012, but concurs that she did not give vacant possession until April 5, 2012 and did not contest the claim. It is allowed in full.

**Carpet replacement - \$1,942.63.** The landlord gave evidence that the month before the tenancy began, the carpets in the rental unit were replaced at a cost of \$4,815.93. She stated that, at the conclusion of the tenancy, there were 16 burn marks in the living room carpet, five in the dining room carpet, and six in the master bedroom plus a bleach stain in one of the rooms. She stated that her carpet supplier advised that it would not be possible to do invisible patches and recommended replacement of two of the carpets and the landlord accepted the damage to the others. The tenant stated that she had the carpets professionally cleaned and a telephone estimate that repairs could have been done for \$300 to \$350. On balance, I find the landlord's claim to be reasonable and proven. However, given that the useful life of average carpet is set at 10 years by standard depreciation tables, and as the carpet was one year old, I allow 90 per cent of this claim which is \$1,748.37.

**Painting - \$1,680.** The landlord and witnesses gave evidence that the rental unit had been painted at the beginning of the tenancy at a cost of \$1,843.52. They stated that because of heavy smoking in the rental unit, walls were stained and had been further marked by the tenant's attempts to wash them. The tenant stated that a railing had not been painted at the beginning of the tenancy, the agreement did not prohibit smoking and that she believed a touch up would have sufficed. I am persuaded by the landlord's evidence, but apply standard depreciation tables which place the useful life of interior paint at four years, one of which has passed. Therefore, I allow three quarters of this claim or \$1,260.

**Glass replacement - \$201.80.** The tenant concurs that she is responsible for this damage and the claim is allowed in full.

**Bed bug treatment - \$520.40.** The landlord submitted that the rental unit had not had bed bugs before the tenancy began and that adjoining rental units did not have bed bugs, and therefore, attributes an infestation to the tenant and claims the cost of treatment. However, as conventional wisdom holds that bed bugs larvae may lie dormant for many months before hatching, I cannot be certain that the tenant caused the problem. However, I note that on the pest control reports, service providers twice noted that treatment was delayed because the tenant had not prepared the rental unit as per written instructions. For the delays, I find that the tenant must pay \$100 of the treatment costs.

**General cleaning - \$440.** The tenant concurs with this claim and it is allowed in full.

**Key not returned - \$30.** The tenant concurs with this claim and it is satisfied by the landlord's retention of the key deposit.

**Filing fee - \$100.** Having found substantial merit in the application, I find that the landlord is entitled to recover the \$100 filing fee from the tenants.

**Security deposit – (\$925).** As authorized by section 72(2)(b) of the *Act*, I order that the landlord retain the deposit in set off against the balance owed.

Thus, I find that the tenants owes to the landlord an amount calculated as follows:

Rent for five days of overholding - \$308.35	\$ 308.35
Painting	1,260.00
Glass replacement	201.80
Bed bug treatment	100.00
General cleaning - \$440.	175.00
Filing fee	<u>100.00</u>
Sub total	\$3,893.52
Less retained security deposit	<u>- 925.00</u>
<b>TOTAL</b>	<b>\$2,968.52</b>

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,968.52**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 16, 2012.

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Residential Tenancy Branch