



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD and FF

This application was brought by the landlord on March 28, 2012 seeking a monetary award for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balanced owed.

As a preliminary matter, the parties gave evidence that the tenants had agreed to use the security and pet damage deposits against the rent owed for February 2012, so only the remainder remains available for set off against the present claims.

In addition, the attending tenant submitted that the property had been listed for sale at the conclusion of the tenancy, and he would not have signed a mutual agreement to end the tenancy, as he did on January 24, 2012, if he had known of the requirements for a Notice to End Tenancy for landlord use and the provision of one month's free rent. However, the landlord had submitted copies of two Notices to End Tenancy dated December 8, 2011 and January 6, 2012, neither of which had been satisfied within the five days that would have extinguished them. The landlord stated that the Mutual Agreement to End Tenancy had been a concession granted to the tenants to give them time to find new accommodation rather than seek an earlier Order of Possession under the unpaid rent notices.

The attending tenant also submitted that he had been deprived of the opportunity to remedy the landlord's claims as the landlord had changed the locks before he had the chance. However, the landlord noted that the locks had not been changed until February 29, 2012, the end of tenancy date set by subsequent notice from the tenants. He stated that the tenant had not appeared at the move-out condition inspection scheduled for noon, then did not appear at the rescheduled 2 p.m. inspection.

### 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.

### Background, Evidence and Analysis

This tenancy initially began in June of 2008 and was renewed at a reduced rent beginning August 1, 2009. Rent was \$2,745 per month and the security and pet damage deposits of \$1,497.50 each, paid on or about June 3, 2008, were applied to the new agreement.

During the hearing, the landlord submitted copies of the move-in/move-out condition inspection reports, photographs taken immediately before and at the end of the tenancy and paid receipts in evidence.

The landlord claims and I find as follows:

**Carpet cleaning - \$279.94.** Clause 14 of the rental agreement required the tenant to clean the carpets to a professional standard annually and/or at the conclusion of the tenancy. This claim is supported by a receipt and it is allowed in full.

**Kitchen wall repair - \$196.40.** This claim represents 3.5 hours labour at \$5 per hour, \$20 labour and \$18.90 HST to put backing behind a hold in the drywall and attend three times to repair a hole left in the kitchen and a wall repair in the bedroom. On the basis of photographic evidence and paid receipt, I find this claim is allowed in full.

**Rekey locks - \$132.** This claim is supported by a receipt for \$231.38 which included replacement of a deadbolt and knob set for the landlord in addition to the rekeying of locks necessitated by the tenants not returning keys as required. As there is a \$50 flat fee service charge, I find that should be split equally between the landlord and the tenant. I find, also, that the tenants are responsible for the \$54 charge to rekey three locks and for the HST for their portion of the charge. Therefore, I find that the tenants are responsible for  $(\$54 + \$25 + \$9.48 \text{ HST}) = \$88.48$  of the locksmith charges.

**Garbage removal - \$560.** This claim is supported by a paid receipt. On the basis of that and photographic evidence, I find that the tenants are responsible for this cost.

**General cleaning - \$591.08.** This claim is based on a receipt from a professional cleaning firm, and on the basis of photograph evidence, I find that the tenants are responsible for this cost.

**Filing fee - \$50.** As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security and pet damage deposits – (\$2,995) \$1,497.50 each.** As noted, by consent of the parties, the security and pet damage deposits were applied in set off against the rent owed for February 2012. The remainder is:

Security deposit	\$1,497.50
Interest (June 3, 2008 to date)	<u>26.02</u>
Sub total	\$3,021.02
Less set off against February 2012 rent	- <u>2,745.00</u>
<b>Remainder available</b>	<b>\$ 276.02</b>

As authorized under section 72 of the Act, find that the landlord may retain the remainder of the deposits in set off against the present claims.

Carpet cleaning	\$ 279.94
Rekey locks	88.48
Garbage removal	560.00
General cleaning	591.08
Filing fee	<u>50.00</u>
Sub total	\$1,765.90
Less remainder of security and pet damage deposits	- <u>276.02</u>
<b>TOTAL</b>	<b>\$1,489.88</b>

### Conclusion

In addition to authorization to retain the remainder of the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,489.88**, 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 28, 2012.

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Residential Tenancy Branch