



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC and FF

This application was brought by the landlord on April 19, 2012 seeking a monetary award for damage to the rental unit and recovery of the filing fee for this proceeding.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order 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 claimant.

### Background, Evidence and Analysis

This tenancy began in May 2008 according to the tenant, although the date is recorded as 2009 in a previous hearing. Rent was \$1,135 per month and the landlord held a security deposit of \$550, the disposition of which was determined in previous hearings.

This matter is complicated by the facts that there are no move-in/move-out condition inspection reports for comparison purposes, the tenancy predated the present landlord who assumed ownership of the rental unit in October of 2010, and there are two rental units in the building leaving some doubt as to whether the subject tenants are responsible for some claimed yard damage.

In addition, perhaps because of the acrimonious conclusion of the tenancy, the parties strongly disagree on even the most trivial of matters and it is difficult to apply remedies under the *Act* when both parties appear to have been non-compliant with its most fundamental principles. I would further note that I declined to hear further evidence after approximately 45 minutes when the landlord told the tenant to “shut up.”

In the present application, the landlord claims, and I find as follows:

**Replace window coverings - \$174.54.** This claim is supported by receipts for \$70.49 and \$104.05 for replacement of kitchen and bedroom blinds respectively. The landlord stated that his purchase agreement for the property included the window coverings which were missing at the end of the tenancy. The tenant stated that she had replaced the original blinds with her own and had discarded the originals. I find that the tenants are partially responsible for replacement of the blinds but, in the absence of definitive evidence as to the age and condition of the originals, I find the tenants one-third responsible on this claim and award the landlord \$57.60.

**Dismantle treehouse, haul yard debris, rock - \$502.** The landlord states that the tenants erected a tree house and installed an above-ground pool without consent. The attending tenant stated that there was an existing tree house when her family moved in and that they dismantled one they built. The invoice submitted in support of this claim also includes re-welding of a gate post and repair of one or more downspouts which would fall in to the landlord's area of responsibility. In the absence of itemization of this invoice, including hauling away of some materials that are not necessarily proven to belong to the tenants, I rely on photographic evidence in awarding the landlord one-third of this claim, \$167.33.

**Lawn seed to patch grass below above ground pool - \$28.20.** The tenant stated that the previous landlord had given permission for installation of the above ground pool on a patch previously utilized for and damaged by the same use. In the absence of any third party evidence to the contrary, this claim is dismissed.

**Re-key locks - \$14.06.** The landlord stated that he had never received the keys while the tenants swore that she left them on the counter. As the tenants had expressed some apprehension of personal contact with the landlord due to previous interactions, I find it understandable that they did not personally return the keys and that the landlord should remain responsible for this cost.

**Dump fees - \$81.80.** The landlord supports this claim with a receipt, but the tenant claims that much of the material shown in the landlord's photo of a loaded truck was taken from a common storage area and was not her property. On the basis of other photographic evidence, I find that the tenants did leave a substantial amount of waste material behind and I award \$50 of this claim.

**Carpet cleaning - \$67.20.** The tenant states that she cleaned the carpets with her own steam cleaner. On the standardized principle of tenant's providing professional carpet cleaning at the conclusion of the tenancy and on the basis of photographic evidence, I allow this claim in full.

**General cleaning - \$336.** While some allowance may be made because of the hasty and acrimonious end of this tenancy, I find that such allowance has been taken into consideration with respect to other matters in dispute. On the basis of photographic evidence and paid receipt, I find this claim should be allowed in full.

**Pressure washing deck - \$156.80.** Unless there has been proven abuse, maintenance of an outside deck is a duty that would normally fall to the landlord. While the landlord claims such abuse by the tenant storing refuse on the deck, I find that, taking into account the length of the tenancy and the worn appearance of the deck, this may simply be a matter of normal wear and tear. I make no award on the claim.

**Repair to tub surround - \$40.** As with other claims, the parties are in complete disagreement on the origin of a hole in the tub surround. The tenant stated the hole existed at the beginning of the tenancy and the previous landlord had never followed up on his promise to repair it. The landlord stated that the hole was not there when he inspected the property on December 2, 2011. On close examination of two photographs of the hole – actually an indentation with open cracks – I must prefer the landlord's version. There is no sign of dirt or moisture accumulation in the cracks as would be the case if it were as old as claimed by the tenant. This claim is allowed in full.

**Filing fee - \$50.** As the application has partially succeeded, I find that the landlord may recover one-half of the filing fee from the tenants.

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

Replace window coverings	\$ 57.60
Dump fees	50.00
Carpet cleaning - \$67.20	67.20
General cleaning	336.00
Repair to tub surround	40.00
Filing fee	<u>25.00</u>
<b>TOTAL</b>	<b>\$743.13</b>

### Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for **\$743.13**, 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: June 18, 2012.

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Residential Tenancy Branch