



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MND, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 19, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on June 1, 2008 as a fixed term tenancy and then renewed on a month to month basis. Rent was \$780.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$375.00 on May 30, 2008. The Landlord said the Tenant moved out of the rental unit on April 3, 2012.

The Landlord said he has submitted the condition inspection report completed on move in on June 3, 2008 and on move out on April 3, 2012. The Landlord continued to say the rental unit was left in a poor condition as indicated in the move out condition inspection report. The Landlord said the Tenant smoked in the unit which was not allowed under the tenancy agreement so the landlord had to paint the unit with special paint to remove the smoke smell and the unit had to have 3 coats of paint to cover the repair work that had to be done to the walls of the unit. The Landlord said he is claiming \$1,160.00 for painting and repairs to the walls of the rental unit. The Landlord continued to say that the carpet was so dirty and damaged from the Tenant's cat, which

was not allowed under the tenancy agreement, that he replaced the carpet with laminate flooring. The Landlord said the cost to do this was \$700.00. The Landlord also said that the Tenant had broken a number of tiles in the kitchen which had to be replaced at a cost of \$150.00. The Landlord said the total cost of repairs and painting the rental unit was \$1,910.00.

Further the Landlord said the Tenant did not pay his portion of the utility bills from November, 2011 to March, 2012. The Landlord said he is claiming \$538.75 for the November, 2011 to January, 2012 bill and \$162.70 for the January, 2012 to March, 2012 utility bill.

The Landlord continued to say that the Tenant did not return the keys to the unit so he had to change the locks on the rental unit which cost \$30.20. In addition the Landlord said because the unit was left in an unclean state he hired a cleaning company to clean the unit at a cost of \$123.20. The Landlord said his total claim for damages is for \$2765.10 and he is also requesting to recover the filing fee for this proceeding of \$50.00.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 (6) of the Act says that if the tenant is required to pay utilities then any utility charges that are unpaid after 30 days and the tenant has been given a formal demand for payment of the utilities can be treated as unpaid rent.

The Tenant does not have the right under the Act to withhold part or all of the rent or unpaid utilities; therefore I find the Tenant is responsible for the unpaid rent/utilities for November, 2011 to January 2012 of \$538.75 and the unpaid utilities from January, 2012 to March for \$162.95.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I accept the Landlord's testimony and evidence with regard to the claim for \$30.20 to change the locks as the Tenant did not return the keys to the unit and for \$123.20 for cleaning the unit as the Landlord provided condition inspection reports and photographic evidence to support his claims. I award the Landlord \$153.40 for these claims.

With respect to the Landlord's claim for repairs and painting the rental unit, because this tenancy was for almost 4 years and the rental unit was renovated 2 years prior to the start of this tenancy, there is some normal wear and tear that the Tenant is not responsible for. I accept the Landlord's claim for the repair of the broken tiles in the kitchen in the amount of \$150.00 and I accept the Landlord's claim for repairs of the walls of \$160.00 as the photographic evidence show this is not normal wear and tear.

Residential Tenancy Branch Policy guideline #40 says that the useful life expectancy of interior paint in a rental unit is 4 years; therefore the painting claim of \$500.00 is considered to be normal wear and tear and is dismissed, but as the Tenant smoked in the unit in violation of the tenancy agreement; I award the Landlord the costs associated with the smoke smell inhibiting paint of \$400.00.

With respect to the replacement of the carpet with laminate flooring, policy guideline # 40 says carpet has a life expectancy of 10 years in a rental unit and as this carpet was 6 years old I award the Landlord  $4/10^{\text{th}}$  of the cost of replacing the carpet with laminate flooring or  $\$700.00 \times 4/10 = \$280.00$ .

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in payment of the rent/utility arrears. The Landlord will receive a monetary order for the balance owing as following:

	Utility arrears:	\$ 701.70
	Lock change	\$ 30.20
	Clean charges	\$ 123.20
	Wall repairs	\$ 160.00
	Tile repairs	\$ 150.00
	Painting	\$ 400.00
	Carpet replacement	\$ 280.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,895.10
Less:	Security Deposit	\$ 375.00
	Subtotal:	\$ 375.00
	Balance Owing	\$ 1,520.10

Conclusion

A Monetary Order in the amount of \$1,520.10 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

---

Residential Tenancy Branch