



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**MND, MNSD, MNR, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### **Preliminary Matters**

Each tenant was served with the Notice of hearing package, within the required time-frame. The tenants stated that they received copies of the 34 pictures submitted by the landlord and one page which included a copy of the invoice for repairs and cleaning.

The landlord stated that the tenants had been served with other documents, such as a copy of the tenancy agreement that had been given with a Notice to end tenancy.

I was not convinced that the tenants had been served a copy of the landlord's evidence package that was in the identical form served to the Residential Tenancy Branch. Therefore, I determined that I would consider only the landlord's photographs and the copy of the 2 invoices.

The parties acknowledged the details of the landlord's claim totaling \$1,500.00 in unpaid rent and \$720.00 for damage to the unit.

The tenants did not make a written submission.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,500.00 for unpaid May, 2012, rent?

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$720.00?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 14, 2012; rent is \$1,500.00 per month, due on the first day of each month. A deposit in the sum of \$750.00 was paid.

A move-in condition inspection report was completed; although the tenants said they did not receive a copy of the report. A move-out inspection was not arranged.

The tenants confirmed they have yet to give the landlord their written forwarding address; the landlord served the tenants via the rental unit address and the tenants each accepted the registered mail containing the hearing package.

The parties agreed that on April 23, 2012, the tenants gave the landlord written Notice to end their tenancy effective May 15, 2012. There is a dispute as to whether the landlord agreed to this end date; the landlord said he did not agree and told the tenants they would owe May rent.

The tenants confirmed that on May 3, 2012, the landlord gave them a 10 Day Notice to End Tenancy for Unpaid Rent for unpaid May, 2012 rent. The tenants did not dispute the Notice and vacated the unit on May 6, 2012. The tenants agreed they did not clean the unit, as they did not have time, as a result of the eviction. The tenants had planned on returning to paint and clean, prior to May 15, 2012.

The tenants confirmed they did not pay May, 2012 rent; they had asked the landlord to retain their deposit for the 2 weeks they planned on remaining in the unit in May.

The landlord supplied photographs taken 1 week after the tenancy which show the need for cleaning; the fridge, oven and microwave were dirty. The bathtub was not cleaned and items were left behind in the home. The landlord hired a cleaner who thought it would take 4 or 5 hours; the cleaner worked for 11 hours and charged \$20.00 per hour. The invoice supplied as evidence indicated payment for cleaning was made by cheque.

The landlord submitted an invoice for “home repair, general maintenance and paint” issued on May 22, 2012, in the sum of \$510.72, for 8 hours of labour at \$50.00 per hour, plus \$56.00 for materials. The landlord stated the fridge door had been broken, walls had been damaged and painting was required.

The tenants questioned the repair invoice as it included maintenance costs and did not provide any breakdown of the charges. The tenants agreed that one bedroom had been damaged by a child, which resulted in the need for painting; they felt that work could have been completed in several hours.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45(1) of the *Act* provides:

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

I find, in the absence of a signed, written mutual agreement to end tenancy, as required by section 45 and 52 of the *Act*, that the terms of the tenancy agreement signed by the parties required the tenants to give 1 month’s written notice to end the tenancy. The written notice given on April 23, 2012, would have been effective May 31, 2012. The tenants owed May rent and it has not been paid.

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,500.00 for unpaid May, 2012, rent.

The tenants testified that they did not clean the unit as they had been evicted and did not have time. The Notice received on May 3, 2012, was not effective until May 13, 2012. I find that this left the tenants ample time to leave the home reasonably clean, as required by the *Act*. I find that the photographs submitted by the landlord supported the claim for the invoiced cleaning costs in the sum of \$220.00 and that the landlord is entitled to compensation in that amount.

In relation to the repairs I find that the landlord has failed to provide adequate verification of the sum claimed. The invoice did not detail the work completed, nor was there evidence before me of inspection reports which set out the state of the home at the start and end of the tenancy.

As the tenants agreed that 1 bedroom required painting I find that the landlord is entitled to the equivalent of 2 hours labour in the sum of \$100.00 as compensation and that the balance of claim for repair is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$750.00, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,870.00, which is comprised of \$1,500.00 unpaid May, 2012 rent, \$220.00 cleaning costs; \$100.00 repairs costs and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the claim is dismissed.

The landlord will be retaining the tenant's security deposit in the amount of \$750.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,120.00**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 27, 2012.

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Residential Tenancy Branch