



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, a series of photographs, and several documents were sent to the Tenant, via registered mail, at the address noted on the Application, on July 30, 2012. The female Landlord cited a Canada Post tracking number that corroborates this statement.

The Tenant submitted a written response to the Landlord's Application for Dispute Resolution, which is a clear indication that he was aware of these proceedings. The Landlord acknowledged receiving this response via registered mail.

I find that the aforementioned documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The female Landlord stated that the tenancy began on December 01, 2011; that it ended on June 30, 2012; that the Tenant paid a security deposit of \$575.00 on November 27, 2011; that the Tenant paid a pet damage deposit of \$575.00 on November 29, 2011; that a condition inspection report was completed by the Landlord and signed by both parties at the start of the tenancy; that the parties jointly inspected the rental unit on July 02, 2012; that a condition inspection report was completed on July 02, 2012 although the Tenant did not sign the inspection report; and that the Tenant mailed his forwarding address to the Landlord on July 18, 2012.

The Landlord is seeking compensation, in the amount of \$265.44, for cleaning the carpet. The Landlord submitted a receipt to show that this expense was incurred. There is a notation on the receipt that indicates there was a "strong dog smell". In a written submission the Tenant declared that the carpets had been cleaned at the end of the tenancy. The male Landlord stated that the carpets had been vacuumed but not shampooed.

The Landlord is seeking compensation, in the amount of \$340.00, for cleaning the rental unit, including cleaning pet hair from a variety of areas. The female Landlord stated that she and members of her family spent approximately 17 hours cleaning the rental unit. The Landlord submitted photographs to show that significant cleaning was required at the end of the tenancy. In a written submission the Tenant declared that several areas of the rental unit were cleaned, although he acknowledged the stove and the fridge were not cleaned.

The Landlord is seeking compensation, in the amount of \$224.00, for repairing damage to two door frames. The male Landlord stated that he believes the door frames were damaged by furniture being moved. The Landlord submitted an estimate that shows it will cost \$224.00 to repair the frames. The Landlord submitted photographs of the damaged frames. In a written submission the Tenant acknowledged that some paint had been chipped off the door frame.

The Landlord is seeking compensation, in the amount of \$50.00, for repairing the entry door threshold. The male Landlord stated that he believes the threshold was damaged by furniture being moved. The male Landlord stated that he intends to replace the threshold himself and he believes it will take approximately four hours to replace it. The Landlord submitted photographs of the damaged threshold. In his written submission the Tenant acknowledged that some paint had been chipped off the door frame.

The Landlord is seeking compensation, in the amount of \$100.00, for mowing and trimming the lawn. The male Landlord stated that he spent approximately four hours mowing and trimming the lawn. The Landlord submitted photographs of the yard. In his written submission the Tenant acknowledged that he had not mowed the lawn for two or three weeks; that he could not keep up with the yard maintenance, which he described as an extension of a large field; and that the Landlord had not mentioned the "true state of affairs with respect to the lawn".

The Landlord is seeking compensation, in the amount of \$25.00, for replacing one set of missing keys. The male Landlord stated that the Tenant was provided with two sets of keys; that the Tenant only returned one set of keys; and that the Landlord replaced the dead bolt. The Landlord did not submit a receipt in support of this claim.

The Landlord is seeking compensation, in the amount of \$25.00, as the Tenant tendered an NSF cheque for rent for January of 2012. In the addendum to the tenancy

agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever a cheque is returned due to insufficient funds.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the evidence submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the carpet in reasonably clean condition. Even if I were to accept the Tenant's written declaration that the carpet had been cleaned at the end of the tenancy, the notation on the carpet cleaning receipt is sufficient to cause me to conclude that additional cleaning was required. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$265.44 for cleaning the carpet.

On the basis of the evidence submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. Although I cannot conclude that the Tenant did not clean some areas of the rental unit, the photographs submitted in evidence clearly show that additional cleaning was required, some of which was related to keeping a pet in the rental unit. On the basis of the photographs submitted in evidence I find that the Landlord's testimony that it took the Landlords and their family approximately 17 hours to clean the rental unit to be credible. I therefore find that the Landlord is entitled to compensation for the time spent cleaning the rental unit, at an hourly rate of \$20.00, which equates to \$340.00. I find the hourly rate of \$20.00 to be reasonable for labour of this nature.

On the basis of the evidence submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damage to two door frames. On the basis of the photographs submitted in evidence I find that this damage was likely caused by moving furniture and that it exceeds "normal wear and tear". I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Given that this claim is supported by an estimate that indicates it will cost \$224.00 to repair the door frames, I find the Landlord is entitled to compensation in this amount.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair a damaged threshold. On the basis of the photograph submitted in evidence I find that this damage was likely caused by moving furniture and that it exceeds "normal wear and tear". I therefore find that the Landlord is entitled to

compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Although the damage has not yet been repaired I find the Landlord's estimate that it will take approximately four hours to replace the threshold to be credible. I find the Landlord's claim of \$50.00 for the time he will spend repairing the damage to be reasonable.

On the basis of the evidence submitted by the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the lawn in reasonable condition. In reaching this conclusion I was heavily influenced by the photographs of the lawn, which clearly indicate mowing and trimming was needed. On the basis of the photographs submitted in evidence I find that the Landlord's testimony that it took him four hours to mow and trim the lawn to be credible. I therefore find that the Landlord is entitled to compensation for the time spent cleaning the rental unit, at an hourly rate of \$20.00, which equates to \$80.00. I find the hourly rate of \$20.00 to be reasonable for labour of this nature.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not return one set of keys to the rental unit, as is required by section 37 of the *Act*. In addition to establishing that a tenant did not comply with the *Act*, a landlord must also accurately establish the cost of remedying that breach, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing a set of keys or replacing the lock. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$25.00 to replace the lock. On this basis, I dismiss the Landlord's claim for compensation for replacing the lock to the rental unit.

As the Tenant tendered an NSF cheque for rent for January of 2012 and the addendum to the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever a cheque is returned due to insufficient funds, I find that the Landlord is entitled to a NSF fee of \$25.00.

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

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,034.44, which is comprised of \$984.44 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the pet damage deposit and the security deposit in full satisfaction of this monetary claim.

I find that the Landlord must return the remaining \$115.56 of the pet damage/security deposit. Based on these determinations I grant the Tenant a monetary Order for the

amount \$115.56. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: September 10, 2012.

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Residential Tenancy Branch