



# Dispute Resolution Services

Page: 1

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 Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the service address noted on the Application, on July 17, 2012. The Agent for the Landlord cited a Canada Post tracking number to corroborate this statement. The Tenant stated that the male Tenant did receive the Application for Dispute Resolution and that she is representing him at this hearing.

At the outset of the hearing the Agent for the Landlord applied to amend the Application for Dispute to remove the other two Respondents from the Application, as they are merely occupants in the rental unit. The Tenant did not dispute this application and the Application for Dispute Resolution has been amended accordingly.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

### 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 Landlord and the Tenant agree that this tenancy began on November 01, 2011 and ended on June 30, 2012; that the monthly rent was \$1,250.00; that the Tenant paid a pet damage deposit of \$350.00 which was returned on July 12, 2012; that the Tenant paid a security deposit of \$625.00; and that the Tenant provided a forwarding address, in writing, on June 20, 2012.

A condition inspection report was completed at the beginning and the end of this tenancy, copies which were submitted in evidence.

The Landlord is seeking compensation, in the amount of \$53.12, for replacing a missing cabinet door. The Tenant agreed that the door was damaged during the tenancy. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$4.48, for repairing a set of blinds. The Tenant agreed that the blinds were damaged during the tenancy. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$3.49, for repairing a shelving unit. The Tenant agreed that the shelving unit was damaged during the tenancy. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$89.60, for repairing a scratch in the living room floor. The Landlord and the Tenant agree that the condition inspection report completed at the start of the tenancy indicates the living room floor was in clean condition with normal wear and tear. The Landlord and the Tenant agree that the condition inspection report completed at the end of the tenancy indicates the living room floor was in clean condition with normal wear and tear. The Landlord submitted photographs of the damaged floor.

The Agent for the Landlord stated that the scratch on the living room floor was not noted on the condition inspection report completed at the end of the tenancy but it was subsequently noted by the Landlords when they moved back into the house. The Tenant stated that she cannot recall if that particular scratch was in the floor at the start of the tenancy, as there were several minor scratches on the floor at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$660.00, for cleaning the rental unit. The Landlord and the Tenant agree that the condition inspection report completed at the end of the tenancy indicates some cleaning was required at the end of the tenancy. The Landlord submitted photographs of the rental unit taken after the end of the tenancy, which are consistent with the entries on the report. Although the photographs are not good quality, it appears that additional cleaning was required behind the appliances and the wood burning stove needed cleaning, which was not noted on the inspection report. In the summary of charges completed at the end of the

tenancy the agent for the Landlord who completed the report estimated that it would take approximately 1.5 hours to clean the rental unit and the Tenant agreed to pay \$45.00 for the cleaning charges.

At the hearing the Agent for the Landlord stated that the Landlord was not satisfied with the cleanliness of the rental unit and additional cleaning was completed. The Tenant stated that she believes 1.5 hours was sufficient to clean the rental unit. The Landlord submitted a copy of a receipt to show that \$840.00 was paid to an individual who spent 42 hours cleaning the rental unit.

The Landlord is seeking compensation, in the amount of \$300.00, for yard maintenance. The Landlord and the Tenant agree that the addendum to the tenancy agreement required the Tenant to “maintain the garden in keeping with the surrounding neighbourhood” and to “keep the gardens in good order”. The Landlord and the Tenant agree that the gardens needed weeding at the end of the tenancy. The Landlord submitted photographs that show the gardens needed weeding.

The Landlord and the Tenant agree that the Tenant returned to the rental unit after the aforementioned photographs were taken and that she weeded the garden. The Tenant stated that she spent approximately three hours weeding the garden after the photographs were taken and that they were left in much better condition than is depicted by the photographs. The landlord submitted no photographs of the condition of the gardens after the Tenant had completed this weeding.

### 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.

As the Tenant agreed that a cabinet door, a set of blinds, and a shelving unit were damaged during this tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to repair the damage. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$53.12 for repairing the door, \$4.48 for repairing the blinds, and \$3.49 for repairing the shelving unit.

I find that the Landlord has submitted insufficient evidence to show that the living room floor was not scratched at the start of the tenancy. In reaching this conclusion I was influenced, in part, by the fact that neither the Tenant nor a witness for the Landlord could specifically recall whether the living room floor was scratched at the start of the tenancy. While I accept that the scratch is not noted on the condition inspection report that was completed at the start of the tenancy, I find that it was also not noted on the

condition inspection report that was completed at the end of the tenancy. As the two reports were completed by the same individual, I find it entirely possible that the scratch was overlooked at the start by the person completing the report at the beginning of the tenancy, just as it was overlooked by that person when she completed the report at the end of the tenancy. As the Landlord has failed to establish that the scratch was not present at the start of the tenancy, I find that the Landlord has failed to establish that the Tenant damaged the floor. I therefore dismiss the Landlord's application for compensation for repairing the floor.

Section 21 of the Residential Tenancy Regulation stipulates that a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection unless the landlord or the tenant has a preponderance of evidence to the contrary. On the basis of the entries on the condition inspection report that was completed at the end of the tenancy, I find that some cleaning was required in the rental unit. On the basis of the summary of charges completed at the end of the tenancy, I find that it would take approximately 1.5 hours to clean the rental unit.

On the basis of the photographs submitted in evidence, I find that cleaning was required behind the appliances and ashes needed to be removed from the wood burning stove. I find the photographs show that these areas needed cleaning even though they were not recorded on the inspection report. On the basis of the photographs, I find that that an additional 1 hour of cleaning was likely required to clean these specific areas.

I find that the Tenant failed to comply with section 37(2) of the Act when the Tenant failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the 2.5 hours needed to render the rental unit reasonably clean, at an hourly rate of \$20.00, which I find to be reasonable compensation for labour of this nature.

In determining this matter I placed little weight on the receipt that shows the Landlord paid \$840.00 to have the rental unit. In reaching this conclusion I was heavily influenced by the fact that a tenant is only required to leave a rental unit reasonably clean, and the cleaning bill does not establish that this amount of cleaning was required to render the unit reasonably clean. I do not find that this receipt constitutes a preponderance of evidence to contradict the initial estimate of \$45.00.

I find that the Landlord has submitted insufficient evidence to show that the gardens were not left in reasonable condition after the Tenant returned to the unit to weed the garden. In reaching this conclusion I note that it was agreed that the Tenant spent time weeding the garden after the photographs of the garden that were submitted in evidence were taken, and that no photographs were submitted to show the condition of the garden after it was weeded for a final time. As the Landlord has failed to establish that the garden was not in reasonable condition after it was weeded for a final time, I find that the Landlord is not entitled to compensation for garden maintenance.

I find that the Landlord's application has some 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 \$161.09, which is comprised of \$111.09 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit in full satisfaction of this monetary claim and I find that the Landlord must return the remaining \$460.91 of the deposit.

Based on these determinations I grant the Tenant a monetary Order for the remaining amount \$460.91. 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 26, 2012.

---

Residential Tenancy Branch