



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR; MND; MNDC, MNSD; SS; O; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent, damages to the rental unit and compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary claim; for an Order that he may serve documents in a different way than required by the Act; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents and copies of his documentary evidence were mailed to the Tenant, via registered mail, to the forwarding address provided by the Tenant. He stated that these documents were mailed "within 2 or 3 days" of picking up the Notice of Hearing documents from the Residential Tenancy Branch. The Landlord did not provide the registered mail receipt and tracking numbers. However, the Tenant provided his own documentary evidence to the Residential Tenancy Branch and to the Landlord and therefore I am satisfied that the Tenant received the Landlord's Notice of Hearing documents and evidence.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Tenant did not sign into the teleconference, which remained open for 40 minutes, and the Hearing continued in his absence.

### **Preliminary Matters**

The Landlord's application includes a request for an Order that the Landlord may serve documents in a different way than required by the Act, however the Landlord provided no testimony with respect to this part of his application and therefore it is dismissed.

### **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order for compensation for the Tenant overholding; the cost of replacing three lights in the rental unit; two NSF cheques; the cost of cleaning the rental unit and shampooing the carpets; an unpaid oil bill; and the cost of replacing a damaged smoke detector?

### **Background and Evidence**

#### **The Landlord gave the following testimony:**

A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,500.00, due the first day of each month. There was an additional charge of \$100.00 per month for each additional occupant. Rent did not include utilities. This tenancy started on April 1, 2011, and ended on May 31, 2012. The Tenant paid a security deposit in the amount of \$750.00 on March 9, 2011.

The Landlord and Tenant completed a move-in Condition Inspection Report. The Tenant attended for a move-out Condition Inspection, but declined to sign the Report because he did not agree with the Landlord's assessment of the damages. The Landlord provided a copy of the Condition Inspection Report in evidence.

The Landlord testified that the Tenant did not vacate the rental unit at 1:00 p.m. as required and that he overheld for 7 hours. The Landlord testified that the Tenant did not leave the rental unit in a reasonably clean condition. He testified that the Tenant smoked in the rental unit, contrary to the tenancy agreement. He stated that he paid **\$95.70** to have the carpet shampooed and that he spent 6 hours cleaning the rental unit after the Tenant moved out. The Landlord seeks compensation for his time in the amount of **\$150.00** (6 hours x \$25.00). He stated that it was still not clean enough for his new tenant to move in and that he had to pay his new tenant **\$80.00** for an additional 4 hours of cleaning the rental unit. The Landlord provided copies of the invoice for the carpet cleaning and a copy of the \$80.00 cheque in evidence. The Landlord also seeks **\$50.00** for the cost of cleaning materials used.

The Landlord testified that the Tenant removed the smoke detector and broke it. The Landlord seeks to recover the cost of a new smoke detector from the Tenant. The Landlord provided a copy of the receipt in the amount of **\$13.99**.

The Landlord stated that two of the Tenant's cheques bounced (March rent and May's oil bill) and the Landlord seeks to recover the **\$50.00** NSF fees. The Landlord provided copies of the two NSF cheques in evidence.

The Landlord stated that the rental unit is in a 5 unit heritage building. He stated that an electrician performed some re-wiring at the rental building, and the Tenant had the electrician take down an old brass chandelier and replace it with a cheap light. The Tenant also removed the covers from two other lights. The Landlord stated that the Tenant did not ask for his permission and that he was unaware that the Tenant had done these things until he performed the final inspection. The Tenant told him that the brass chandelier had been “recycled”. The Landlord testified that he could not find a similar chandelier in order to provide an estimate for this loss, but stated that **\$100.00** was a “guestimate”. The Landlord replaced the two missing light covers with covers purchased at garage sales and therefore has no receipts for this cost. The Landlord stated that each cover cost \$20.00, for a total of **\$40.00**.

The Landlord testified that the Tenant did not pay the final oil bill in the amount of **\$127.00**. The Landlord did not provide a copy of the bill in evidence.

### **Analysis**

This is the Landlord’s claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord did not provide sufficient evidence that he suffered a loss as a result of the Tenant failing to vacate the rental unit at 1:00 p.m. on May 31, 2012, and therefore this portion of his application is dismissed.

The Landlord did not provide sufficient evidence to support his claim that the Tenant did not pay a final oil bill in the amount of \$127.00 (for example a copy of the oil bill) and therefore this portion of his application is dismissed.

Based on the Landlord's undisputed testimony at the Hearing, I am satisfied that the Tenant removed three lights without the Landlord's permission. The Landlord did not provide documentary evidence for the cost of replacing the lights, however I find the amounts claimed by the Landlord to be very reasonable and I allow this portion of his claim.

Likewise, based on the Landlord's testimony, I am satisfied that the Tenant did not leave the rental unit in a satisfactory state of cleanliness and that the Landlord suffered a loss as a result of the Tenant's breach of Section 37(2) of the Act. I accept the Landlord's estimate of \$50.00 for the cost of the cleaning products. I find that the Landlord is entitled to this portion of his claim. The Tenant did not shampoo the carpets at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that tenants shampoo carpets after a tenancy of one year.

Based on the Landlord's undisputed testimony at the Hearing and the documentary evidence provided, I find that the Landlord has proven his claim for the cost of replacing the smoke alarm.

There is a clause in the tenancy agreement that provides for NSF fees of \$25.00. I find that the Landlord has proven this portion of his claim for the two NSF cheques.

Based on the Landlord's undisputed affirmed testimony and the documentary evidence provided, I find that the Landlord has established a monetary award, in the total amount of **\$579.69**, calculated as follows:

Cost to replace three lights	\$140.00
Cost of cleaning materials	\$50.00
Cost to shampoo carpets	\$95.70
Landlord's time to clean rental unit	\$150.00
New tenant's time to clean rental unit	\$80.00
Cost to replace smoke detector	\$13.99
NSF charges	<u>\$50.00</u>
TOTAL	<b>\$579.69</b>

The Landlord has been largely successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply a portion of the security deposit in satisfaction of the Landlord's monetary award. No interest has accrued on

the security deposit. The balance of the security deposit must be returned to the Tenant.

I hereby provide the Tenant a Monetary Order, calculated as follows:

Security deposit paid	\$750.00
Less Landlord's monetary award	<u>\$629.69</u>
Balance of security deposit to be returned	<b>\$120.31</b>

### **Conclusion**

I find that the Landlord has established a monetary award in the amount of **\$629.69**. I hereby provide the Tenant a Monetary Order in the amount of **\$120.31** for service upon the Landlord, which represents return of the balance of the security deposit after deducting the Landlord's monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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