



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MND; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages to the rental unit; and to recover the cost of the filing fee from the Tenant.

An Interim Decision was made on July 12, 2012, which should be read in conjunction with this Decision.

On July 11, 2012, this matter was adjourned, with the consent of the Landlord, to enable the Tenant to obtain legal advice.

On August 9, 2012, the Landlord's agent provided the Landlord's submissions and the Tenant's assistant started providing her submissions but we ran out of time before the Tenant's assistant could conclude. In addition, the Tenant's assistant sought an adjournment in order to obtain copies of police reports and a Report to Crown Counsel.

The matter was adjourned to September 25, 2012, in order to hear the balance of the Tenant's submissions and to allow the Tenant and her assistant to gather more information from the police and the Courts. The Residential Tenancy Branch mailed Notices of the Reconvened Hearing to both parties. The Tenant's copy of the Notice was sent to the Tenant's assistant YG, as she requested during the August 9, 2012, Hearing.

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 Hearing was scheduled to begin at 3:00 p.m. on September 25, by teleconference. The Landlord's agent signed into the teleconference on time and was ready to proceed. I advised the Landlord's agent that my practice is to wait 10 minutes past the appointed time for both parties to sign into a hearing. The other party had not joined the Hearing by 3:10 p.m., and I was in the process of concluding the conference when the Tenant's two agents signed in at 3:13 p.m. The conference continued until 3:19 p.m. at which time the Hearing was concluded. The Tenant signed into the conference at 3:19 p.m.

The Tenant did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for the cost of cleaning the rental unit and damages to the rental unit?

### **Background and Evidence**

The rental unit is a 4 bedroom townhouse. A copy of the tenancy agreement which was signed by the parties on June 24, 2008, was provided in evidence. This tenancy began on July 1, 2008 and ended by mutual agreement on September 20, 2010. A copy of the Mutual Agreement to end the tenancy was also provided in evidence.

Both parties were present at a move-in condition inspection that took place on June 27, 2008. The Landlord and Tenant attended a "pre-move out inspection" on September 10, 2010. The Landlord's agent stated that the purpose of a pre-move out inspection was to help prepare a tenant for the formal move-out inspection. The move-out condition inspection occurred on September 30, 2010, but the Tenant did not attend. Copies of the reports were provided in evidence.

The Landlord's agent stated that the Tenant did not clean the rental unit at the end of the tenancy; left holes in walls and doors; broke a window; left garbage and debris in the rental unit; and damaged the carpets so badly that they had to be replaced. In addition, the Landlord's agent testified that the Tenant painted the bedrooms in vivid colours, which had to be repainted. The Landlord's agent stated that the carpet and paint were new at the beginning of the tenancy. The Landlord provided photographs and copies of invoices in support of its claim. The Landlord seeks a monetary award in the amount of \$8,142.12.

The Tenant's assistant YG testified that the Tenant was the victim of a vicious assault and kidnapping and left the rental unit in fear for her safety and that of her children. The Tenant's assistant testified that the person who assaulted the Tenant was known to the Tenant but that she had not invited him into the rental unit. She stated that the incident resulted in criminal charges of assault, assault with a weapon, aggravated assault and kidnapping. She stated that much of the damage was caused by the person who assaulted the Tenant, and that the Tenant was therefore not responsible. The Tenant's assistant testified that she was still information gathering, and that she had not received all of the details from the multiple police agencies involved in the charges. She stated that there was a significant amount of documentation that would corroborate that the

Tenant was a victim, had not invited the perpetrator into the rental unit, and was therefore not responsible for the damages. She also stated that the victim service worker who assisted the Tenant was currently on holidays and therefore not available to give testimony at the August 9<sup>th</sup> Hearing.

The Tenant's assistant asked the Landlord's agent if it was true that the rental unit has been destroyed by fire. The Landlord's agent stated that the fire occurred only 4 months ago and was not relevant to the Landlord's application. He stated that the landlord had to incur the costs of repairing and cleaning the rental unit in 2010 after the Tenant left in order to re-rent the rental unit.

The Landlord's agent replied that even if the Tenant was not responsible for all of the damages, the Tenant was still responsible for the damage to the carpet, the paint, and for the cost of cleaning the rental unit. The Tenant's assistant replied that the Tenant left the rental unit in fear and that cleaning was the last thing on her mind.

The Landlord submitted that the Tenant moved some of her things and didn't leave everything behind. He stated that the assault occurred in April or May of 2010, yet the Tenant remained in the rental unit until the end of September. The Tenant's assistant submitted that the Tenant's assaulter went to jail after the assault, but was released in July, 2010, returning to the rental unit and seeking vengeance on the Tenant.

### **Analysis**

Section 32 of the Act requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the rental property by the tenant. Section 27 of the Act requires a tenant to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear.

In this case, the Tenant did not dispute the damages caused or the cleaning that was required at the end of the tenancy. She submitted that she was not responsible for the damages because she did not permit her assaulter on the rental property. She also submitted that she should not be held responsible for the cost of cleaning the rental unit and disposing of her garbage because she left the rental unit on short notice in fear for her safety.

I find that the Tenant did not provide sufficient details or evidence that the person known to her, who assaulted her in April 2010, was not permitted on the rental property by the Tenant for the following reasons:

- The Tenant was given opportunity to provide corroborating documentary evidence and did not do so. The Tenant provided no documentary evidence of any attempt made to get the documentary evidence (for example a copy of a letter to the Police or the Crown prosecutor requesting information).
- The Tenant's victim service worker did not attend the Hearing on September 25 to give testimony.
- The Tenant remained in the rental unit for several months after the assault.

Based on the Landlord's agent's testimony, the Landlord's documentary evidence, and the lack of corroborating evidence from the Tenant, I find that the Landlord has proven that damages existed as claimed. I do not accept the Tenant's submission that she is not responsible for the cost of cleaning the rental unit and disposing of her garbage. On the balance of probabilities, I find that the damage occurred due to the actions or negligence of the Tenant or a person permitted on the property by the Tenant in violation of the Act. The Landlord provided receipts and documentation proving the actual amount required to compensate the Landlord for repairing the damage and cleaning the rental unit.

Residential Tenancy Guideline 40 provides for the useful life of various items. The guidelines stipulate that carpets have a useful life of 10 years and indoor paint has a useful life of 4 years. Therefore, I have prorated the Landlord's claim with respect to those two items.

The Landlord provided insufficient evidence with respect to the age of the doors or the broken window that were replaced and therefore I make no award for the cost of these materials, only the cost of the labour in installing them. I find that the Landlord has established a monetary claim against the Tenant, calculated as follows:

Cost of cleaning the rental unit (29 hours x \$20.00 per hour)	\$580.00
Cost of hauling the Tenant's garbage away	\$505.80
Cost of replacing carpet (\$3,752.71 x 80%)	\$3,002.19
Cost of painting rental unit (\$1,033.92 x 50%)	\$516.96
Cost of labour to repair kitchen cabinet doors, stair rail, headers for all closet doors and bathroom plumbing (5 hours @ \$30.00 per hour)	\$150.00
Cost of labour to replace all 4 bedroom doors, bathroom door, basement door, upper hall closet door, window safety lock (16 hours @ \$30.00)	<u>\$480.00</u>
<b>TOTAL</b>	<b>\$5,234.95</b>

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

**Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$5,284.95** for service upon the Tenant. This Order must be served on the Tenant and 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 27, 2012.

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Residential Tenancy Branch