



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND, MNSD, FF

### Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of all or part of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The tenancy began on August 1, 2007. At the outset of tenancy the monthly rent was \$1,350.00, and a security deposit of \$675.00 was collected. By the end of tenancy monthly rent was \$1,450.00. There is no evidence of a move-in condition inspection report.

Tenancy ended effective on or about June 30, 2012. While the parties conducted a walk-through of the unit at the end of tenancy, there is no evidence of a move-out condition inspection report.

The tenant provided the landlord with a forwarding address on July 5, 2012. Thereafter, the landlord filed an application for dispute resolution on July 20, 2012.

During the hearing the parties undertook to resolve at least some aspects of the dispute.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to resolve particular aspects of their dispute during a hearing. Pursuant to this provision, during the hearing the parties reached the following specific agreement:

### **RECORD OF SETTLEMENT**

- that the tenant accepts responsibility for \$150.00 of the \$390.88 claimed by the landlord for the purchase of a new bathroom sink;
- that the tenant accepts responsibility for the full amount of \$206.67 claimed by the landlord for installation of the new bathroom sink.

Total amount agreed: **\$356.67\***.

Based on the documentary evidence and testimony, the various remaining aspects of the landlord's application and my findings around each are set out below.

\$460.00: *cleaning and wall repair*. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Further, Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises."

The attention of the parties is also drawn to the following statutory provisions:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Both section 24 and 36 of the Act provide, in part, that the landlord's right to claim against a security deposit is extinguished if the landlord "does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations."

In the absence of the comparative results of move-in and move-out condition inspection reports and in consideration of “reasonable wear and tear” over what was a 5 year term of tenancy, I find there is insufficient evidence to support this aspect of the claim. Accordingly, it is hereby dismissed.

\$268.25 [comprised as follows: \$40.25: towel bar / \$29.00 towel bar / \$199.00: mirror medicine cabinet]. While there is no conclusive evidence that the landlord explicitly consented to the removal / replacement of the towel bars and mirror, neither is it clear that the landlord disapproved or expressed concern about the removal / replacements at the time when the work was done. It is also understood that the items which were removed were given to the landlord shortly after they were removed. Further, it is understood that at the end of tenancy the tenant offered to re-install the original items. However, the landlord declined the offer and claims that as some or all of the original items were discarded, they had to be replaced.

Residential Tenancy Policy Guideline # 1, which speaks to “Landlord & Tenant – Responsibility for Residential Premises,” provides in part as follows:

### **Renovations and Changes to Rental Unit**

1. Any changes to the rental unit and / or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and / or residential property to its original condition before vacating, the landlord may return the rental unit and / or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

In the absence of conclusive evidence that explicit consent was given by the landlord for removal / replacement of the items in question, and bearing in mind that the items removed were not discarded by the tenants and were not new when they were removed, I find that the landlord has established entitlement limited to \$50.00\*.

\$2,105.60: carpet replacement. The landlord estimated that the carpet was approximately 6 years old at the time when the subject tenancy began. As the tenancy spanned a period of 5 years, the carpet was therefore 11 years old at the end of tenancy.

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of carpets is 10 years. As the useful life of the subject carpet exceeded 10 years by the end of tenancy, and as the condition of the carpets was not documented either on a move-in or move-out condition inspection report, this aspect of the application is hereby dismissed.

**\$50.00\***: *filing fee*. As the landlord has achieved a measure of success with this application, I find that the landlord has established entitlement to recovery of the full amount of the filing fee.

Following from all of the above, I find that the landlord has established entitlement in the amount of **\$456.67** (\$356.67 + \$50.00 + \$50.00). I order that the landlord retain this amount from the security deposit of \$675.00 plus interest of \$14.43 (total: **\$689.43**), and I further order that the landlord repay the balance of the security deposit plus interest to the tenant in the amount of **\$232.76** (\$689.43 - \$456.67).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$232.76**. Should it be necessary, this order may be served on the landlord, filed in the 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: October 03, 2012.

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Residential Tenancy Branch