



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MND, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for a monetary Order, as the rental unit has been vacated.

Both parties 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 to me.

The Agent for the Landlord stated that the Landlord sent the Tenant an amended Application for Dispute Resolution, in which the Landlord claimed a monetary Order of \$6,156.86, a Notice of Hearing, and several documents the Landlord wishes to rely upon as evidence, via registered mail, on October 04, 2012. The Tenant acknowledged receipt of these documents on October 29, 2012. The Tenant declined the opportunity for an adjournment to provide her with more time to consider those documents.

With the consent of both parties, the Landlord's Application for Dispute Resolution has been amended to reflect the correct spelling of the Tenant's name.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and damage to the rental unit?

Is the Landlord entitled to retain any portion of the security deposit?

Is the Landlord entitled to recover the fee from the Tenant for the filing the Application for Dispute Resolution?

### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on March 15, 2012; that the Tenant was required to pay monthly rent of \$1,180.00 plus \$20.00 for parking by the first day of each month; that the Tenant paid a security deposit of

\$600.00; and that a condition inspection report was completed at the start of the tenancy.

The Landlord and the Tenant agree that they signed a mutual agreement to end the tenancy at noon on September 30, 2012. The Agent for the Landlord stated that a condition inspection report was completed at the end of the tenancy, in the absence of the Tenant. The Agent for the Landlord acknowledged that the Tenant was not served with a Notice of Final Inspection of the rental unit.

The Tenant stated that she returned to the rental unit sometime in the afternoon of September 30, 2012 to remove some of her property and found that the locks to the rental unit had been changed. She stated that she contacted the resident manager who told her that she had one hour to remove her personal belongings from the rental unit. The Tenant stated that she removed some of her property during that hour and left some property behind. She stated that she left the keys to the rental unit in the office mail box on the morning of October 01, 2012.

The Agent for the Landlord stated that the keys to the rental unit were located in the office mail box and that the locks were changed on October 01, 2012.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay any rent for September or October of 2012. The Landlord is seeking compensation for unpaid rent for the month of September and one day of rent for October of 2012.

The Landlord is seeking compensation, in the amount of \$200.00, for the cost of removing property from the rental unit. The Tenant acknowledged that some property was left in the rental unit as she did not have time to remove it all in the one hour the resident manager gave her to remove her personal belongings.

The Landlord is seeking compensation, in the amount of \$50.00, for NSF fees. The Agent for the Landlord stated that the tenancy agreement requires the Tenant to pay a \$25.00 fee if the Tenant tenders a cheque that is not honored by her financial institution. The Tenant stated that she received some pages of the tenancy agreement as evidence but she does not have the term that requires her to pay an NSF fee. The Agent for the Landlord stated that he believes the tenancy agreement was submitted to the Residential Tenancy Branch sometime last week. Although I did not have it before me at the time of the hearing, I was able to locate two pages of the agreement prior to rendering this decision.

The Landlord is seeking compensation, in the amount of \$140.00, for the cost of cleaning the carpet. The Tenant acknowledged that the carpet required cleaning at the end of the tenancy. The Landlord and the Tenant agree that the Landlord provided the Tenant with a copy of a receipt for this cleaning, in the amount of \$235.00. The Agent for the Landlord stated that he believes the tenancy agreement was submitted to the Residential Tenancy Branch sometime last week. Although I did not have it before me

at the time of the hearing, I was able to locate this evidence prior to rendering this decision.

The Landlord is seeking compensation, in the amount of \$156.80, for the cost of cleaning the blinds. The Tenant acknowledged that the blinds required cleaning at the end of the tenancy. The Landlord and the Tenant agree that the Landlord provided the Tenant with a copy of a receipt for this cleaning, in the amount of \$177.40. The Agent for the Landlord stated that he believes the tenancy agreement was submitted to the Residential Tenancy Branch sometime last week. Although I did not have it before me at the time of the hearing, I was able to locate this evidence prior to rendering this decision.

The Landlord is seeking compensation, in the amount of \$172.48, for replacing two damaged blinds. The Tenant denied damaging blinds during the tenancy. The Landlord submitted a photograph of a closed set of blinds on a windowsill.

During the hearing the Agent for the Landlord withdrew the application for compensation for general cleaning of the rental unit, for painting, for replacing the carpet, for unpaid utilities, and for repairing a damaged door.

### Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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.

Based on the undisputed evidence presented at the hearing, I find that the parties entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,180.00 by the first day of each month; that the tenancy ended, by mutual consent, at noon on September 30, 2012; and that the Tenant did not pay rent for September of 2012. As the Tenant was required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,180.00 in rent to the Landlord for September of 2012.

I find that the Landlord submitted insufficient evidence to show that the Tenant did not vacate the rental unit on September 30, 2012. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the Landlord did not change the locks on September 30, 2012, in which case the Tenant would not have been able to access the unit, or that refutes the Tenant's testimony that she was unable to access the rental unit during the afternoon of September 30, 2012, as the locks had been changed. As the Landlord has failed to establish that the Tenant occupied the rental unit after October 01, 2012, I dismiss the Landlord's application for rent for October 01, 2012.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she had not removed all her property from the rental unit by the end of the tenancy. Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize their damage or loss. In my view, had the resident manager allowed the Tenant more time to remove her personal belongings from the rental unit, the Landlord may not have incurred the cost of disposing of the belongings. In determining this matter I was heavily influenced by the testimony of the Tenant, who stated that the resident manager gave her limited time to remove her property on the afternoon of September 30, 2012 and by the absence of evidence from that resident manager to refute this testimony. I therefore dismiss the Landlord's claim for compensation for disposing of personal property.

I find that the Landlord has submitted insufficient evidence to show that the tenancy agreement required the Tenant to pay a fee if she tendered a cheque that was returned to the Landlord due to insufficient funds. In reaching this conclusion I was heavily influenced by the fact I did not have a full copy of the tenancy agreement; the Tenant stated that she was unable to locate a term in the portion of the tenancy agreement that was served to her which provides for this fee; and I was unable to locate a term in the portion of the tenancy agreement that was submitted to the Residential Tenancy Branch which provides for this fee. As the Landlord has failed to establish there is a term in the tenancy agreement that requires the Tenant to pay a NSF fee, I dismiss the Landlord's claim for \$50.00 in NSF fees.

Based on the undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when she did not leave the carpet and the blinds in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for cleaning the carpet. As the Landlord has produced receipts to show that the Landlord paid \$235.00 for carpet cleaning and \$177.40 for cleaning the blinds, I find that the Landlord has proven it is entitled to the full amount of their claim for carpet cleaning, which is \$140.00, and for cleaning the blinds, which is \$156.80.

I find that the Landlord submitted insufficient evidence to establish that the blinds in the rental unit were damaged during the tenancy and I dismiss the Landlord's claim for compensation for replacing blinds. In reaching this decision I was influenced by the Tenant's testimony that the blinds were not damaged. Although the condition inspection report does indicate the blinds are damaged, this report is of limited value as the Landlord did not provide the Tenant with a Notice of Final Inspection. I find the photograph of the closed set of blinds is of little evidentiary value, as the blinds do not appear to be damaged in the photograph.

I find that the Landlord's application has merit and 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 \$1,526.80, which is comprised of \$1,180.00 in unpaid rent, \$296.80 for cleaning, 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*, authorize the Landlord to retain the Tenant's security deposit of \$600.00, in partial satisfaction of the monetary claim.

I grant the Landlord a monetary Order for the balance of \$926.80. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: October 30, 2012.

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Residential Tenancy Branch