



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC, MNSD, MND, FF

### Introduction

This hearing was convened in response to cross applications.

On September 27, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing the Application for Dispute Resolution.

On August 28, 2012 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the fee for filing the Application for Dispute Resolution.

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.

The Landlord submitted documents and photographs 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.

The Tenant submitted documents and photographs to the Residential Tenancy Branch. The Tenant stated that copies of this evidence were placed in the Landlord's mail box on November 05, 2012. The Agent for the Landlord stated that she has not seen the evidence, as she does not live in the same country as the Landlords; that the Landlords were out of the country on November 05, 2012 and have not returned to the country since that date; and that the Landlord has not made arrangements to pick up evidence served to the service address provided to the Tenant. As the Tenant has served these documents in accordance with section 88 of the *Residential Tenancy Act (Act)* and the Landlord did not make a reasonable effort to collect evidence served in this matter, I have accepted the Tenant's evidence as evidence for these proceedings. It is important to note that any evidence considered when making this decision will be specifically outlined in this decision.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for damage to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Is the Tenant entitled to recover double the security deposit 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 the tenancy began on August 01, 2012; that the Tenant was required to pay rent of \$1,375.00 by the first day of each month; that the Tenant paid a security deposit of \$687.50; that the tenancy ended on July 31, 2012; that the Tenant provided the Landlord with a forwarding address, via email, on August 01, 2012; that that the Tenant did not authorize the Landlord to retain the security deposit, in writing; and that the Landlord returned \$329.00 of the security deposit in August of 2012.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning of this tenancy and that the rental unit was jointly inspected at the end of the tenancy. The Tenant stated that a condition inspection report was not completed at the end of the tenancy. The Agent for the Landlord did not know whether a condition inspection report was completed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$180.00, for cleaning the rental unit. The Tenant submitted photographs of selected areas in the rental unit which show those areas were left in reasonably clean condition. The Landlord submitted photographs of several areas in the rental unit which show those areas were not left in reasonably clean condition, such as the oven, the toilets, under the washing machine, the floors of the washroom, the inside of the shower, the stove, and inside of drawers. The Tenant agrees that the Landlord's photographs show some cleaning was still required, although they contend it would only have taken approximately an hour to clean those areas. The Agent for the Landlord stated that it took her parents 3 hours to clean the rental unit.

The Landlord is seeking compensation, in the amount of \$184.80, for cleaning the carpets. The Landlord submitted photographs of the carpet unit that show the carpet was stained/dirty in several areas and a receipt to show that this expense was incurred. The Tenant submitted photographs of the carpet from a distance, in which some of the same stains can be seen.

The Tenant contends that the condition inspection report, which was not submitted in evidence, indicates that the carpets had some "darkening" at the start of the tenancy. The Landlord stated that she has not seen the condition inspection report so she does not know what it says regarding the condition of the carpet at the start of the tenancy.

The Tenant with the initials "J.C." stated that the carpet was cleaned at the end of the tenancy. He acknowledged the carpet was stained at two places during the tenancy and that these stains remained after cleaning. The Landlord submitted an unsigned letter from the current occupant of the rental unit, in which the author of the letter declared that the carpet had not been cleaned at the start of the tenancy; that the Landlord cleaned the carpet after the start of the tenancy; and that there are still stains on the carpet that the carpet technician stated could not be removed.

The Landlord is seeking compensation, in the amount of \$3,510.41, for replacing the carpets. The Landlord contends that the attempts at cleaning did not remove all the stains in the carpet so the carpet needs to be replaced. The Landlord submitted no photographs to show the condition of the carpet after the carpet had been cleaned by the Landlord.

The Landlord is seeking compensation, in the amount of \$425.00, for painting two bedrooms. The Agent for the Landlord stated that the Tenant was given paint to touch-up the walls in the rental unit; that the Tenant used the paint to touch-up two walls in two bedrooms; and that the Tenant did not shake the paint can before using it, so the paint used was not the correct colour. The Landlord submitted a photograph of two areas on one wall that show a relatively large repair.

The Tenant with the initials "J.C." stated that the Landlord provided them with paint to touch-up the walls in the rental unit; that the Tenant did shake the can before applying it to the walls; that the paint was applied to two places on one wall in one bedroom; and that the Tenant noticed the colour did not match the wall but assumed it would change colour when it dried.

The Landlord is seeking compensation for the cost of preparing photographs for these proceedings.

### 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.

On the basis of the photographs submitted in evidence by the Landlord, 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. While I accept that the Tenant's cleaned some areas of the rental unit, these photographs clearly show that more cleaning was required. In determining this matter, I placed greater weight on the photographs submitted by the Landlord than the photographs submitted by the Tenant, as the

Tenant's photographs merely show that some, not all, of the rental unit was left in reasonably clean condition.

On the basis of the photographs submitted by the Landlord, I find the estimate that it took a total of 6 hours to clean these hours reasonable and I do not accept the Tenant's estimate that it would only take 1 hour to clean the areas. I therefore find that the Landlord is entitled to compensation for the 6 hours spent cleaning the rental unit, at an hourly rate of \$20.00 per hour, which I find to be reasonable compensation for cleaning of this nature.

On the basis of the testimony of the Tenant, I find that the carpets were stained in at least two places during this tenancy and that those stains remained at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for \$184.80 the Landlord paid to clean the carpets.

I find that the Landlord has submitted insufficient evidence, such as photographs or a condition inspection report, to show that the carpets in the rental unit were not stained at the start of the tenancy or that the stains that appeared during this tenancy remained after the Landlord cleaned the carpet. Even if I were to accept the unsigned letter from the new occupants as evidence that there were stains on the carpet after they were cleaned by the Landlord, I find that the Landlord has failed to establish whether these stains were pre-existing or were caused by the Tenant. I therefore dismiss the Landlord's claim for replacing the carpet.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not stir the paint supplied by the Landlord prior to applying it to the wall. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that they did shake the can prior to applying it, and by the absence of evidence, such as a paint sample, that corroborates the Agent for the Landlord's testimony that the proper touch-up paint was provided to the Tenant. Given that the colour of the touch-up paint is so drastically different than the colour of the paint on the wall, I find it entirely possible that the incorrect paint was provided to the Tenant. I therefore dismiss the Landlord's claim for painting.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for costs for photographs, as they are costs which are not named by the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence presented at the hearing, I find that the Landlord failed

to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full amount of the security deposit and the Landlord did not file an Application for Dispute Resolution until September 27, 2012, which is more than fifteen days after the tenancy ended and the Landlord received the Tenant's forwarding address via email.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

I find that the Landlord's application has merit and I find that the Landlord is entitled to recover, from the Tenant, the cost of filing this Application for Dispute Resolution. I find that the Tenant's application also has merit and I find that the Tenant is entitled to recover, from the Landlord, the cost of filing this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim of \$354.80, which is comprised of \$120.00 for general cleaning, \$184.80 for cleaning the carpet, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Tenant has established a monetary claim of \$1,425.00, which is double the security deposit and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that this claim must be reduced by the \$329.00 that was returned in August of 2012, leaving an amount owed of \$1,096.00.

After offsetting the two claims, I find that the Landlord owes the Tenant \$741.20 and I grant the Tenant a monetary Order for this amount. 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: November 15, 2012.

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Residential Tenancy Branch