



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord October 12, 2012, to obtain a Monetary Order for: damage to the unit site or property; for unpaid rent or utilities; to keep all or part of the pet and or security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; tenant security deposit and payment ledgers: replacement tenancy agreement signed in May 2010; subsequent tenants' lease as of June 15, 2012; receipts for repairs; letters issued to the Tenant; the original tenancy agreement; letter of May 12, 2012; e-mail communications; final notice of inspection; move out inspection report form; and photos of the rental unit.

The Landlord advised that there was no record of a move in inspection report from the previous owner and no report was completed when they took over managing the unit in May 2010. The Tenant confirmed that no move in condition inspection report form was completed.

The parties confirmed the Tenant had entered into a fixed term tenancy agreement with the previous owner and occupied the unit as of January 8, 2010. The Landlord submitted a copy of the first page of that agreement from January 8, 2010, which indicated the fixed term would end on December 31, 2012, and the Tenant acknowledged that he had initialled this agreement. Rent was payable on the first of each month in the amount of \$1,700.00 and on December 9, 2009 the Tenant paid \$850.00 as the security deposit and on January 5, 2010 he paid \$500.00 as the pet deposit. The Tenant provided notice to end his tenancy early, by e-mail and vacated the property sometime in April 2012. Rent was paid in full up to March 31, 2012 and no rent was paid for the month of April 2012. The Tenant vacated the property prior to the end of April 2012 without communication with the Landlord and without providing the Landlord with his forwarding address.

The Landlord submitted a copy of a letter dated May 12, 2010, which was sent to the Tenant requesting that the Tenant sign a new tenancy agreement which displayed the new property management company's name as landlord. She confirmed that the letter stated that the only change was the landlord's name and all remaining terms remained the same as their original agreement. She also confirmed that they only had the first page of the tenancy agreement and that they assumed that their tenancy agreement was the same as the one previously issued and therefore would have the same terms.

The Landlord advised that after receiving e-mail communication from the Tenant in mid April 2012 they wrote him a letter on April 25, 2012 to advise him of the move out inspection they had scheduled for April 30, 2012 at 2:30 p.m. When they attended the unit they were told by other tenants that the Tenant had vacated the property so they conducted the move out inspection in the absence of the Tenant who did not attend at the scheduled time.

The Tenant confirmed that he moved out of the unit, prior to April 30, 2012, and he did not attend the move out inspection or arrange to meet with the Landlord to return the keys. He stated he left the keys inside the rental unit on the counter.

The Landlord argued that the Tenant breached his fixed term tenancy causing them to suffer a loss of rental income and he did not clean or repair the unit prior to moving out. As a result they are seeking compensation for damage and loss as follows:

- 1) \$1,568.00 for painting the rental unit. The landlord pointed to the photos provided in evidence which support that the Tenant had painted around a wall mounted T.V. without painting behind the T.V. and he painted another wall with the word "red" with black spray paint around the door frame and other square objects. They argued that the entire unit had to be painted in three stages: priming, before and after cleaning and renovations. The Landlord does not know when the unit was previously painted.
- 2) \$197.68 for costs to replace the lock and have new keys cut. The Landlord stated that they did not have a key to the unit and they did not find the

Tenant's keys inside. It was an older lock they had replaced and thought it was better to replace it instead of re-keying it.

- 3) \$4,250.00 for unpaid or loss of rent which is comprised of \$1,700.00 for April 2012, \$1,700.00 for May 2012, and \$850.00 for June 2012. The Landlord argued that they advertised the unit on all common internet sites and their own property management website as soon as they found out the Tenant was moving. She confirmed they advertised the unit at a higher amount of rent and did not re-rent the unit until June 15, 2012 for \$75.00 more a month than what the Tenant was paying.
- 4) \$150.00 in NSF charges and fees as per their tenancy agreement. The Landlord provided a security deposit refund ledger which outlines the dates of when the Tenant's rent payments were NSF. The Landlord was not able to confirm if the Tenant's original tenancy agreement included charges for NSF fees but argued it was a standard tenancy agreement and therefore should have included the fees.
- 5) The Landlord withdrew her claim for liquidated damages as she noticed that the original tenancy agreement did not provide for a lease breaking fee or liquidated damages.
- 6) \$302.40 for cleaning the rental unit. The Landlord provided an invoice dated July 7, 2012 for cleaning the rental unit. She confirmed that the cleaning was not done until after they had removed all the debris and garbage left behind by the Tenant and until all of the painting and repairs were completed. She noted that the only item that was cleaned by the Tenant was the fridge and the rest of the unit was left dirty.

The Tenant denied responsibility for all of the items being claimed by the Landlord. He confirmed that he painted the unit with permission from the original owner and then argued that he should not be responsible to pay to repaint more than two walls, the one where the T.V. was and the one where he painted with black and red paint. He argued that the rental unit had not been painted for several years prior to his tenancy therefore he should not have to pay to repaint the entire unit. He also noted that he was a professional painter and that he should be credited for the painting he had done.

The Tenant affirmed that he left the keys inside the rental unit. He refutes the Landlord's submission that they did not have a key as they had recently attended the unit to let him inside the unit after he was locked out. He argued that he should not have to pay to replace an old lock that did not work properly which he had asked to have replaced prior to the end of his tenancy. He said he thought that would be the Landlord's responsibility to conduct maintenance on the property and not his.

The Tenant argued that he did not break a lease because his original tenancy agreement was for a fixed term that was supposed to end December 31, 2011. He stated that there was a clerical error on his tenancy agreement which the previous owner acknowledged and told him not to worry about. He confirmed that he did not raise the issue with the new property management company when he signed their new tenancy agreement.

The Tenant confirmed that he did not clean the rental unit at the end of the tenancy because he had a verbal agreement with the previous owner which excused him from cleaning anything at the end of his tenancy except the fridge. The Tenant did not provide testimony regarding the NSF charges and did not provide evidence of verbal agreements he allegedly had with the previous owner.

### Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Upon review of the aforementioned and the evidence before me I find, on a balance of probabilities, as follows:

Section 32 (3) of the Act provides that a tenant of a rental unit must 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 residential property by the tenant.

Section 37(2) of the Act provides that 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 (b) give the landlord all the keys that are in the possession of the tenant.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

The Landlord has applied for \$1,568.00 for painting the entire rental unit; however the Landlord was not able to provide evidence of when the unit was last painted. The Tenant occupied the unit for over two years and argued that the unit had not been painted for several years. The Tenant acknowledged that he should only be held responsible to paint two of the walls which he admitted would require painting considering the condition he left them in. Accordingly, I award the Landlord compensation for priming and painting two of the walls and trim in the amount of **\$250.00.**

I accept the Landlord's evidence that the Tenant did not leave the keys for the rental unit on the counter which would warrant the Landlord claiming to have the lock re-keyed and new keys cut. The Landlord has applied for \$197.68 which included the cost of replacing the old lock which would have surpassed its useful life. Therefore I dismiss the Landlord's claim for the cost of the lock and award them compensation for the trip charge and keys in the amount of **\$81.76** (\$18.00 + \$55.00 + tax).

The evidence supports the Tenant did not pay rent for April 2012 and he vacated the unit prior to the 30<sup>th</sup>, without informing the Landlord. Therefore, I find the Tenant had possession of the unit for the entire month of April 2012 and I award the Landlord unpaid rent for April 2012 in the amount of **\$1,700.00**.

The rental unit was re-rent June 15, 2012 causing the Landlord to suffer a loss of unpaid rent for May and half of June 15, 2012. The Landlord did not submit evidence of the advertisements placed for re-renting the unit; however, they did provide testimony that they advertised the unit on the internet, for a higher amount of rent, as soon as they knew the Tenant would be vacating. Seeking to re-rent a unit at a higher amount of rent does not meet the test to mitigate or minimize a loss; therefore, I dismiss the Landlord's claim for loss of rent for May and half of June, 2012.

The Landlord submitted that the previous landlord did not complete proper forms and did not keep proper records. Furthermore, the Landlord informed the Tenant that the terms of his original tenancy agreement would not change with him signing the new tenancy agreement listing the new Landlord's name. In the absence of proof indicating that the original tenancy agreement required the Tenant to pay NSF charges, I find there to be insufficient evidence to prove this claim meets the requirements of the *Regulations*. Furthermore, there is no evidence before me to indicate the Landlord attempted to collect NSF charges from the Tenant prior to the end of this tenancy. Therefore, I find there is insufficient evidence to meet the test for damage or loss and I dismiss the Claim for NSF charges.

The Landlord withdrew her claim for liquidated damages as she noticed that the original tenancy agreement did not provide for a lease breaking fee or liquidated damages.

The evidence supports the Tenant did not clean the rental unit prior to vacating it as required by section 37 of the *Act*. Accordingly, I award the Landlord cleaning costs of **\$302.40**.

The Landlord has been partially successful with their claim; therefore I award them partial recovery of their filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposits plus interest as follows:

Painting two walls	\$ 250.00
Re-keying & keys cut	81.76
Unpaid rent for April 2012	1,700.00
Cleaning costs	302.40
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,384.16</b>
<b>LESS:</b> Security Deposit \$850.00 + Interest 0.00	-850.00
Pet Deposit \$500.00 + Interest 0.00	-500.00
<b>Offset amount due to the Landlord</b>	<b><u>\$1,034.16</u></b>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,034.16**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: December 28, 2012.

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Residential Tenancy Branch