



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this 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. Neither party submitted documentary evidence.

### Issue(s) to be Decided

Is the Landlord entitled to compensation damages to the rental unit; to retain all or part of the security deposit paid by the Tenant; 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 this tenancy began on February 01, 2012; that it ended on August 31, 2012; that the Tenant paid a security deposit of \$1,162.50; that a condition inspection report was completed at the beginning and the end of this tenancy; that the Tenant emailed a forwarding address to the Landlord on, or about, September 04, 2012; that the Landlord did not have written authorization to retain any portion of the security deposit; and that the Landlord has not refunded any portion of the security deposit.

At the hearing the Landlord withdrew his claim for compensation for missing flatware, broken glassware, and damage to the floor.

The Landlord is seeking compensation, in the amount of \$11.20, to replace a rubber shower mat that was missing at the end of the tenancy. At the hearing the Tenant agreed to pay this amount to the Landlord.

The Landlord is seeking compensation, in the amount of \$24.64, to replace two spoons and one ladle that were missing at the end of the tenancy. At the hearing the Tenant agreed to pay this amount to the Landlord.

The Landlord is seeking compensation, in the amount of \$31.71, to clean an ottoman. At the hearing the Tenant agreed to pay this amount to the Landlord.

The Landlord is seeking compensation, in the amount of \$11.19, for replacing a kitchen strainer. The Landlord and the Tenant agree that the strainer was in good condition at the start of the tenancy and that it was rusted by the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$5.59, for replacing a missing cookie sheet. The Landlord and the Tenant agree that the cookie sheet was not left in rental unit at the end of the tenancy and that on September 05, 2012 the Landlord declined the Tenant's offer to return the cookie. The Landlord stated that the offer was declined because the cookie sheet had already been replaced.

The Landlord is seeking compensation, in the amount of \$270.83, for replacing a garburator. The Landlord and the Tenant agree that on July 21, 2012 the Tenant reported that the garburator was no longer working.

The Landlord stated that he asked the Tenant to press the re-set button on the garburator and to check the circuit breaker; that the Tenant informed him that the garburator was not making any noise; that on the basis of the information provided by the Tenant he concluded that the garburator needed to be replaced; that he did not test the garburator himself; that he personally replaced the garburator; that he subsequently disassembled the garburator and found a screw inside the garburator that was foreign to the garburator; that he reassembled the garburator and it is now fully functional; and that he had been installing kitchen doors in the rental unit in June of 2012.

The Tenant with the initials "H.D." stated that the garburator simply did not work when the Tenant attempted to use it; that the malfunction was not preceded by any unusual noises; that she felt inside the garburator but could not locate any foreign objects; that she pressed the re-set button and checked the breaker but was unable to identify the problem; that neither Tenant had been using screws in the area of the garburator; and that the Landlord had been installing doors on the kitchen cupboards in June of 2012.

The Landlord is seeking compensation, in the amount of \$68.75, for cleaning the filter in the dishwasher. The Landlord and the Tenant agree that on July 26, 2012 the Tenant reported that the dishwasher was not draining properly. The Landlord stated that he removed the filter in the dishwasher and found a variety of foreign debris in the dishwasher, including soil, string, seeds, hair, and plastic. He stated that the dishwasher is two or three years old and that it was functioning properly at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$53.75, for inspecting the dishwasher. The Landlord and the Tenant agree that on August 10, 2012 the Tenant reported that the dishwasher was again not draining properly. The Landlord stated that when he inspected the dishwasher he found that it was fully drained and functioning properly. He stated he found residue of garden soil in the sink; he believes that the soil clogged the drain; and he believes that the drain cleared itself when the dishwasher was placed through a second cycle. He contends that the dishwasher would not have drained unless the Tenant put it through an additional cycle.

The Tenant with the initials "H.D." stated that the dishwasher did not work as efficiently after the garburator was replaced; that he continued to experience intermittent problems with the dishwasher backing up after the Landlord cleaned the filter in July; that when the Tenant reported the problem on August 10, 2012 there was approximately two or three inches of water in the bottom of the dishwasher; that the Tenant was not home when the Landlord came to repair the dishwasher on this occasion; and that when the Tenant returned home the dishwasher appeared to be functioning properly.

### 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.

As the Tenant has agreed to pay the Landlord for a missing rubber shower mat and three missing spoons, I find that the Tenant must pay the Landlord \$35.84. As the Tenant has agreed to pay the Landlord for cleaning an ottoman, I find that the Tenant must pay the Landlord \$31.71.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair or replace the rusted food strainer that was damaged during the tenancy and the Tenant removed a cookie sheet from the rental unit at the end of the tenancy. In addition to establishing that the Tenant damaged/removed the Landlord's property, the Landlord must also accurately establish the cost of replacing the property. I find that the Landlord failed to establish the true cost of replacing the strainer and the cookie sheet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlord's testimony that he paid \$11.19 to replace the strainer and \$5.59 to replace the cookie sheet. I therefore dismiss the Landlord's claim for compensation for these items.

On the basis of the undisputed testimony of the Landlord, I find that the garburator was damaged by a screw that was introduced into the garburator. I find that the Landlord

has submitted insufficient evidence to establish that the screw was introduced into the garburator by the actions or neglect of the Tenant. In reaching this conclusion I was influenced, in part, by the absence of evidence that refutes the Tenant's testimony that the Tenant did not work with screws in that area. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord had been installing doors on the kitchen cupboards in June of 2012. I find it entirely possible that the screw fell into the garburator while the Landlord was installing the doors and that the screw did not damage the garburator until July, either because the garburator was not used or because the screw was benign for a period of time. As the Tenant is only obligated to repair damage caused by action or neglect of the Tenant or a guest of the Tenant, I dismiss the Landlord's claim for repairing the garburator.

On the basis of the undisputed evidence, I find that the dishwasher was not working properly in July of 2012 as a result of a clogged filter. While I accept the Landlord's testimony that there were a variety of foreign objects in the filter, I find that the Landlord submitted insufficient evidence to establish whether all of the foreign objects were introduced into the filter during the first six months of the tenancy or whether the objects simply accumulated during the 2-3 year life of the dishwasher. I find that filters, by their very nature, require periodic cleaning. I therefore find it reasonable to conclude that the need to clean a filter should be considered reasonable wear and tear. As the Tenant is not obligated to repair damage caused by reasonable wear and tear, I dismiss the Landlord's claim for cleaning the filter in the dishwasher.

I can find no reason to discount the Tenant's testimony that the dishwasher was not draining properly on August 10, 2012 when the problem was reported and I can find no reason to discount the Landlord's testimony that it was functioning properly when he subsequently inspected the rental unit. I find that the Tenant complied with the Tenant's obligation to report a perceived problem with the rental unit and the Landlord complied with his obligation to respond to the report. I do not find that the Landlord is entitled to compensation for complying with his obligation to maintain the dishwasher. Even if I accepted the Landlord's speculation that the Tenant remedied the problem by putting the dishwasher through an additional cycle, this does not discount the Tenant's claim that the dishwasher was not working properly.

I find that the Landlord has submitted insufficient evidence to corroborate his speculation that the dishwasher did not drain properly on August 10, 2012 because the Tenant had disposed of garden soil in the sink. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, which corroborates the Landlord's claim that there was garden soil in the sink or that refutes the Tenant's claim that they did not dispose of garden soil in the sink.

I find that the Landlord's application has some merit, even though the Landlord did not establish the amount of compensation due for property that was damaged. I therefore find that the Tenant must pay the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$117.55, which is comprised of the \$67.55 the Tenant agreed to pay the Landlord and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit.

I find that the Landlord must return the remaining \$1,044.95 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$1,044.95. 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: December 06, 2012.

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Residential Tenancy Branch