



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD and FF

### Introduction

This reconvened hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary award for unpaid utilities, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The original hearing was conducted on October 23, 2012, resulting in an Interim Decision on that date, which should be read in conjunction with this final Decision. That hearing was adjourned due to the length of the landlord's presentation of her evidence, in order that the tenant could present her response to the landlord's evidence and application.

The parties again appeared, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

### Background and Evidence

#### *Tenant's evidence in response to the landlord's application:*

There was no mention made of damage, mould or fleas in the condition inspection report. Additionally, the tenant and her family used the bathroom fan and questioned what a "proper" use of the fan would be.

The tenant brought to the landlord's attention the leaking windows and during the tenancy, the skylight, which blew off.

The landlord did not take the photos of the rental unit during the inspection and questioned that the landlord added items after the inspection and prior to sending her the condition inspection report in an email. The landlord did not mention the condition of the windows, walls or floors during the inspection.

The tenant denied violating the 1 pet clause, as her cat had a litter of kittens, which she kept for only 7 weeks.

The tenant moved out 2 days prior to the end of the tenancy in order that her friends and family could assist in cleaning the rental unit.

The tenant denied damage to the weather stripping, which was not mentioned during the final inspection.

The tenant's relevant evidence included a written submission, three witness statements concerning cleaning efforts and the condition of the rental unit and email communication between the parties.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

*Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.*

Under section 35 of the Act, the landlord and the tenant must inspect the rental unit at the end of the tenancy and complete an condition inspection report in accordance with the Act and the Residential Tenancy Branch regulations. The regulations states that a condition inspection report must contain the date of the move out date and inspection

and that the condition inspection report be sent to the tenant in accordance with section 88 of the Act.

In the case before me, the condition inspection report did not contain such move out date or the date of the final inspection. Additionally, the landlord transmitted the condition inspection report to the tenant via email, which is not an accepted method of delivery under section 88 of the Act.

Additionally, I find I could not rely upon the condition inspection report to accurately depict the condition of the rental unit at the end of the tenancy due to the landlord's own admission that following the move-out, walk through inspection, additional damage was discovered. There was no evidence to show that the landlord asked the tenant to re-attend the rental unit for a further inspection, which led me to accept the tenant's submission that items were added after the final inspection which she attended.

I was particularly influenced by the landlord's submission that after the inspection, she noted that "All" wall and floors were dirty, which I consider would be easy to detect during a final inspection, with the tenant present.

I also find I could not rely upon the landlord's allegation of damage to or un-cleanliness of the rental unit due to the landlord's strong contention that the tenant is required to leave the rental unit the very same as when she moved in and that the rental unit should be move-in ready for the succeeding tenant. The landlord's standard is not what is required of a tenant under the Act, which requires the tenant to leave the rental unit reasonably clean, less reasonable wear and tear. Therefore I am not able to make a distinction in the landlord's evidence of what may be the landlord's standard and what is required of a tenant under the Act.

I also find I cannot rely upon the landlord's photographic evidence as the photos were not taken during the inspection and did not show the same depiction or location as at the beginning of the tenancy. In reaching this conclusion, I was particularly influenced by the landlord's admissions that she got on hands and knees and took a photograph of the bottom of the refrigerator door.

Due to the above, as I find I could not rely upon the condition inspection report or photographs to show damage or un-cleanliness by the tenant, I find the balance of the evidence consisted of disputed testimony, which I find does not sufficiently meet the landlord's burden of proof. I therefore dismiss the landlord's claim for cleaning supplies for \$23.67, cleaning supplies, re-keying for \$11.28, cleaning supplies for \$6.71,

cleaning, repair supplies for \$17.71, light switches for \$4.69, landlord charge for cleaning, repair for \$742.06, and contractor repairs in the full amount.

As the tenant admitted damage to two doors, I allow the landlord's claim for damage to two of the three doors claimed. The landlord's contractor's receipt shows a total of \$475.78 for three doors, from which I have subtracted one-third, to arrive at a total for tenant responsibility of \$317.19. From this amount I have deducted the amount of \$15.86 for the depreciation of 1 year of the doors, which have a useful life of 20 years. I therefore find the landlord has established a monetary claim for \$301.33.

As to the cleaning under the kitchen appliances, which the tenant admitted was probably not done, the landlord has charged for her time at the rate of \$60.00 per hour, which I find unreasonable. Due to this, I find the landlord has not supplied a reasonable amount for cleaning under the appliances and I do not allow her claim for such costs.

I also dismiss the landlord's claim for flea treatment due to her admission that no fleas were detected and I therefore find the landlord has failed to meet step 2 of her burden of proof.

I dismiss the landlord's claim for the estimate for painting as the landlord has not incurred a cost for painting, which is step 3 of her burden of proof.

I allow the landlord's claim for the water bill for \$38.21.

As the landlord's claim contained some merit, I allow her to recover the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim of \$389.54, comprised of door replacement of \$301.33, \$38.21 for the water bill and the filing fee of \$50.00.

I allow the landlord to retain the amount of \$389.54 from the tenant's security deposit of \$675.00 in satisfaction of her monetary award and I grant the tenant a monetary order for the balance due in the amount of \$285.46, under authority of Section 67 of the Act

I am enclosing a monetary order for \$285.46 with the tenant's Decision. Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

Conclusion

The landlord has proven a total monetary claim of \$389.54, which she is directed to retain from the tenant's security deposit of \$675.00.

The tenant is granted a monetary order for the balance due, in the amount of \$285.46.

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* and is being mailed to both the applicant and the respondent.

Dated: December 10, 2012.

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Residential Tenancy Branch