



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by an agent for the landlord and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding rent and strata fines; for compensation for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided the following documents as evidence:

- A copy of a tenancy agreement signed by the parties on May 25, 2010 for a 1 year fixed term tenancy beginning on June 1, 2010 for a monthly rent of \$1,850.00 due on the 1<sup>st</sup> of each month with a security deposit of \$925.00 paid;
- A copy of an Order of Possession granted on August 20, 2012 ordering the tenant to "deliver full and peaceable vacant possession and occupation" of the rental unit no later than 1:00 p.m. on of September 30, 2012;
- A copy of a Condition Inspection Report dated June 1, 2010 signed by the female tenant recording the condition of the rental unit at the start of the tenancy;
- A copy of a Condition Inspection Report dated October 5, 2012, not signed by either tenant recording the condition of the rental unit at the end of the tenancy;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection to schedule the move out inspection on October 5, 2012 at 6:00 p.m.

The landlord seeks this compensation based on the condition inspection reports and photographic evidence submitted. The tenants submit that the move in condition inspection report was completed several months after the start of the tenancy and does not reflect the condition of the unit at the start.

The landlord seeks compensation as outlined in the following table:

Description	Amount
Overholding	\$324.32
Cleaning	\$168.00
Mirror door	\$369.60
Carpet Replacement	\$1,824.40
Strata bylaw fine	\$200.00
Plumbing – August 2011	\$100.24
Plumbing – May 2012	\$182.56
Wall repairs	\$336.00
<b>Sub Total</b>	\$3,505.12
Less amount paid on account (stated in landlord's evidence)	-\$107.00
<b>Total</b>	\$3,398.12

The tenants dispute that the unit required any cleaning at the end of the tenancy and submit that the landlord did not even attempt to clean the carpets and do not believe there was any urine smells that warranted replacing the carpets. The landlord did not provide any receipts for cleaning the rental unit. The landlord is claiming 70% of the actual costs to re-carpet the unit in recognition of the age of the 3 year old carpet and has provided a copy of an estimate for the full value of the replacement.

The tenants submit that the mirrored door broke as a result of the track installation and that when it fell off the track they removed it from the unit and put into storage. The tenants testified that they reported this to the landlord, however the landlord testified that they never receive any such report from the tenants. The landlord has not submitted into evidence any receipts for the door replacement.

The tenants submit that the landlord had initially attempted to collect from them the full amount of the plumbing bill from August 2011 but that when they submitted their claim they cut the amount owed in half. The bill indicates that the plumber completed work in two separate units and was on site for 1.5 hours and that both were billed in the single bill.

The bill shows the plumber removed toys from the toilet in this unit while the plumber and that he assessed the other unit required a new garburator, faucet and drain pipe hook up. The bill was for a total of \$200.48. The tenants accept responsibility for their portion, however they disagree with the amount based on the differences in the work completed in the two units.

In addition, the tenants submit that the plumbing bill from April 2012 in which the plumber had to look at their plugged sink that resulted from garburator problems. This bill indicates the plumber was on site for 1 hour and the total bill was for \$182.56. The

tenants submit that the first bill should reflect a similar division of responsibility between the two separate units.

Further, the tenants submit that the plumbing bill from 2012 also does not indicate that they were the cause of the problem that the plumber was called for. The bill notes that the sink had plugged because the drain was full of potato peels because the garburator was not working. The landlord is not charging the tenants for replacing the garburator but rather only for the visit to unplug the sink.

The tenants submit that the walls had not been painted prior to the start of the tenancy only primed and as a result the walls were damaged easily and could not even be washed without creating more damage. The tenants acknowledge that where their TV was required some patch work. The landlord submits the rental unit had been painted prior to the start of the tenancy.

The tenants acknowledge responsibility for the strata fine but noted that they were never given an opportunity to dispute the fine. The fine was levied against the landlord because the tenant had put garbage on the patio contrary to strata bylaws.

The tenants dispute the overholding charges as the landlord had agreed to allow them to stay additional days.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the landlord's claim for overholding Section 57 of the *Act* prevents a landlord from taking possession of a rental unit unless he has a writ of possession issued by the Supreme Court of BC. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the tenant occupies the unit after the tenancy has ended.

As the tenancy ended on September 30, 2012 I find the tenants were overholding until they had returned the keys to the landlord and from the testimony of both parties that was on the date of the move out condition inspection or October 5, 2012. Despite the landlord's claim of \$324.32 I find, based on the monthly rental of \$1,850.00, the per diem rate of rent for the month of October 2012 was \$59.68. Therefore, for the 5 days of overholding I find the landlord is entitled to a total of \$298.40.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the landlord's claim for cleaning, I note that in the condition inspection report the landlord indicates that walls and trim in the entry and kitchen were dirty; that the cabinets and doors in the kitchen were dirty; and that the carpet had stains, in particular urine stains.

As the landlord testified that the rental unit was going to be painted and the landlord has claimed for replacement carpets, I find the only potential cleaning necessary was the kitchen cabinets and doors. However, the landlord has provided no receipts or invoices for cleaning work and as such, I find he has failed to provide sufficient evidence of the work that was required or the value of that work. I dismiss this portion of the landlord's claim.

I find the landlord has established the tenants caused damage to the mirrored door that required replacement. However, again the landlord has provided no evidence to establish the value of the replacement and as such, I dismiss this portion of the landlord's claim.

I accept the tenant's position regarding the landlord's claim for replacement carpeting. That is I find the landlord has failed to provide any evidence that he took any steps to determine if the carpets could be cleaned to remove any dirt, stains or smells.

Section 7 of the *Act* requires a party who makes a claim against the other party in a tenancy to do whatever is reasonable to minimize the loss. Without attempting to see if the carpet could be cleaned I find the landlord failed in his obligations under Section 7. I dismiss this portion of the landlord's claim.

I find the landlord has established the tenants owe the landlord for the strata bylaw fine and grant the landlord \$200.00 for this portion of his claim.

In relation to the plumbing bills, I accept the tenant's position that the bill from August 2011 should not split in half to share with the other unit listed on the bill as the work completed in this unit was far less than that required in the other unit.

Based on a comparison of the two bills and the duration of both site visits listed in the bills I find the landlord is entitled to the equivalent for a charge of ½ hour from the plumber or 41.00 plus \$7.50 surcharge and taxes of 12% for a total of \$54.32.

For the plumbing bill of April 24, 2012 I note that the reason for the service call was that the sink was plugged as a result of "potato peels due to garburator not grinding". I find the landlord has failed to establish that the root cause of the garburator not grinding was a result of the tenant's actions and I dismiss this portion of the landlord's claim.

Despite the tenants' claim that the walls were only primed and not painted and therefore susceptible to easily being damaged and marked I find they have provided no evidence to substantiate this position. In addition the tenants themselves acknowledge there was damage to the walls where their TV was installed and that they did do some repair to.

As such and based on the condition inspection report and photographic evidence, I accept the landlord's claim for repairs to the drywall in the amount claimed.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$938.72** comprised of \$298.40 overholding rent owed; \$200.00 strata bylaw fine; \$54.32 plumbing; \$336.00 drywall repairs and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$925.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$13.72**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 23, 2013.

