



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MND, MNDC, MNSD, FF / MNSD

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security and pet damage deposits / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting the double return of the security and pet damage deposits.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There were five previous files opened in the on-going dispute between these parties.

As documented in the most recent decision dated August 24, 2012, pursuant to a written tenancy agreement a fixed term of tenancy began on March 1, 2007, with "a series of fixed term tenancy agreements" following thereafter. A security deposit of \$437.50 and a pet damage deposit of \$437.50 were collected on March 1, 2010. Monthly rent was due and payable in advance on the 30<sup>th</sup> day of each month, and the correct amount of rent was determined to be \$875.00.

Further to the above, pursuant to the decision of August 24, 2012 an **order of possession** was issued in favour of the landlord to be effective on or before 1:00 p.m., September 30, 2012. As well, a **monetary order** was issued in favour of the landlord for \$1,700.00, this amount to be paid by the tenant to the landlord "by 5:00 p.m. on August 31, 2012."

During this present hearing the parties agreed that the monetary order comprises rent due for both August and September 2012, that the tenant has not paid the landlord \$1,700.00, and that the tenant vacated the unit effective August 31, 2012 without providing notice as required by section 45 of the Act, which speaks to **Tenant's notice**.

Thereafter, the tenant applied for review of the above decision. However, as the tenant's application was not filed in a timely manner, his application was dismissed and the decision dated August 24, 2012 remains in effect.

A move-out condition inspection was conducted with the participation of both parties on August 31, 2012. However, the move-out condition inspection report bears only the landlord's signature, and there is no date shown on this particular document as to when the related move-in condition inspection took place. Further, the report appears to have been altered using "white out," and the landlord acknowledged that she made changes to the report after the tenant left. Further, while the tenant's forwarding address is noted on this report, the landlord testified that she added it after receiving a letter from the tenant in November 2012, in which he provided his forwarding address.

Additional move-in / move-out condition inspection report(s) / addendum(s) have been submitted in evidence. They are variously detailed, and cumulatively they present an incomplete record of the condition of the unit as one tenancy agreement ended and another tenancy agreement began. Specifically, the evidence includes, but is not necessarily limited to, the following:

- a move-in condition inspection report which shows 2 possession dates: May 1, 2006 *and* March 2007, in addition to 2 move-in inspection dates: February 23, 2006 / 2007. While this report bears the signatures of both parties, it is not clear when the document was signed;
- a move-in condition inspection report showing a possession date of February 28, 2009 and a move-out date of February 28, 2010. This report bears the signatures of both parties and appears to have been completed on or about February 28, 2009;
- an "interim report / monthly inspection" condition inspection report showing a move-in condition inspection date of May 1, 2011 and a move-out inspection date of May 1, 2012. This document bears only the tenant's signature which appears to have been affixed in 2011.

Documentary evidence includes a copy of the tenant's letter to the landlord by date of October 30, 2012. In his letter the tenant provides his forwarding address and requests the return of his security and pet damage deposits. The letter was sent by registered mail and evidence includes the Canada Post tracking number. The Canada Post website informs that the item was "accepted at the Post Office" on November 16, 2012 and "successfully delivered" on November 22, 2012.

The landlord filed her current application for dispute resolution on November 28, 2012. The tenant's current application for dispute resolution was filed on February 21, 2013.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be found at the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Below, the attention of the parties is drawn to sections of the Act which are particularly relevant to the circumstances of this dispute.

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) 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 or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act speaks to **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Both parties submitted considerable documentary evidence, some of which was submitted late. Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings around each are set out below.

## TENANT

\$1,900.00: *double return of security deposit (2 x \$475.00 = \$950.00) and pet damage deposit (2 x \$475.00 = \$950.00).*

The calculations above reflect the tenant's claim that the security deposit of \$437.50 and the pet damage deposit of \$437.50 were each raised by \$37.50 to \$475.00. He claims he paid this difference in cash. There is no receipt in evidence to support this claim, and the landlord denies that either deposit was increased from \$437.50 to \$475.00. Further, I note in the tenant's letter of October 30, 2012 to the landlord his request for return of the security and pet damage deposits, each in the amount of \$437.50. In the result, I find that the security and pet damage deposits collected were not altered from \$437.50 subsequent to the decision of August 24, 2012 in which the Arbitrator found that both deposits were \$437.50.

As to the tenant's forwarding address, I find that it was added to the move-out condition inspection report by the landlord in November 2012, approximately 2 months after the tenant vacated the unit. Further, I find that it was provided to the landlord by the tenant in the tenant's letter of October 30, 2012 which, as previously noted, was sent by registered mail and received by the landlord on November 22, 2012.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of 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 / pet damage deposit(s) or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit(s), and must pay the tenant the double amount of the security / pet damage deposit(s).

In summary, I find that the landlord was informed of the tenant's forwarding address on November 22, 2012 when she received the tenant's letter dated October 30, 2012 (mailed on November 16, 2012). As the landlord filed her application for dispute resolution on November 28, 2012, which is within 15 days after November 22, 2012, I find that the tenant has not established entitlement to the double return of his security / pet damage deposit(s). Accordingly, the tenant's application is hereby dismissed.

## **LANDLORD**

*\$160.00: repair surface damage to drywall.*

Further to the provisions set out in section 37 of the Act, as above, which speak to a requirement that the unit be left "reasonably clean, and undamaged except for reasonable wear and tear," Residential Tenancy Policy Guideline # 1 addresses Landlord & Tenant – Responsibility for Residential Premises," in part:

## **WALLS**

### Cleaning:

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

### Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures / mirrors / wall hangings / ceiling hooks, it is

not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

## **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals.

Following from all the above, in view of the length of the overall tenancy which spanned a period of more than 5 years, and in consideration of the irregularities surrounding the manner in which the final move-out condition inspection report was completed, this aspect of the landlord's claim is hereby dismissed.

**\$257.60:** *repair stair railing.*

I find that the various move-in and move-out condition inspection reports, in combination with the receipt submitted in evidence, are sufficient for me to find that the landlord has established entitlement to the full amount claimed.

**\$500.00:** *insurance deductible (damaged linoleum).*

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of tile is 10 years, and the useful life of hardwood / parquet is 20 years. The useful life of linoleum is not specified.

The landlord testified that the linoleum which was replaced was approximately 15 years old. There is move-in / move-out documentation on which some damage to the linoleum is identified. While the tenant contributed to normal wear and tear on the linoleum over the approximate 5 year period of his tenancy, I find there was some damage that was in excess of normal wear and tear. Following from all of the above, I find that the landlord has established entitlement to compensation in the limited amount of **\$75.00**.

**\$290.00:** *house cleaning (landlord: 6 hours x \$35.00] per hour [\$210.00] & agent: 4 hours x \$20.00 per hour [\$80.00]).*

In consideration of the requirements set out in section 37 of the Act, and in view of the irregularities associated with the completion of the final move-out condition

inspection report, I find that the landlord has established entitlement limited to **\$120.00**, which is calculated on the basis of 8 hours x \$15.00 per hour.

**\$750.00:** *landscape restoration following vehicle damage to lawn.*

Residential Tenancy Policy Guideline # 1, as above, addresses PROPERTY MAINTENANCE. In short, a tenant is responsible for “routine yard maintenance,” while a landlord is responsible for “major projects.” In the absence of a commercial receipt, in view of the irregularities surrounding the move-out condition inspection report, and in consideration of the seemingly large scale of landscaping undertaken, relative to the damage claimed, I find that the landlord has established entitlement limited to **\$250.00**.

**\$70.00:** *grass cutting (landlord: 2 hours x \$35.00 per hour & use of machine).*

I find that the landlord has established entitlement limited to **\$30.00**, which is calculated on the basis of 2 hours x \$15.00 per hour.

**\$669.47:** *repair to pet-damaged window.*

On the basis of information set out on various move-in / move-out documentation, I find on a balance of probabilities that the tenant is responsible for damage to the “white vinyl window” caused by the tenant’s pet. However, in the absence of any particular information concerning the age of the window, and in view of the irregularities associated with completion of the final move-out condition inspection report, I find that the landlord has established entitlement limited to **\$300.00**.

**\$50.00:** *screen damage.*

The landlord testified that as she has not undertaken to repair / replace the screen, no actual cost has been incurred. Accordingly, this aspect of the application is hereby dismissed.

**\$225.00:** *repair to front gate and fence.*

The landlord testified that the amount claimed includes the \$15.62 cost of a gate post (also shown below), in addition to her own labour. Related documentary evidence includes a receipt for purchase of the gate post. In sum, I find that the landlord has established entitlement limited to **\$100.00**.

**\$20.00:** *replace security chain on gate.*

The landlord testified that she replaced the chain with one already in her possession. Consequently, there is no receipt in support of the purchase of a new chain. In the result, I find that the landlord has established entitlement limited to **\$10.00**, or half the amount claimed.

**\$1,700.00** *unpaid rent per decision dated August 24, 2012.*

This aspect of the landlord's current application has already been decided in the decision dated August 24, 2012. As earlier noted, the parties testified in this present hearing as to their agreement that the monetary order issued in favour of the landlord for this amount, reflects rent due for August and September 2012. As the tenant has not made this payment, as noted on the monetary order itself, "should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court."

**\$66.07:** *grass seed.*

Documentary evidence includes a receipt, as well as exchanges between the parties around the impact of the tenant's vehicle on outside areas surrounding the unit, on which the landlord had instructed the tenant not to drive. In short, I find that the landlord has established entitlement to the full amount claimed.

**\$15.62:** *gate post.*

The landlord testified that this cost is included in the amount of \$225.00 claimed above, around which a finding is also set out above.

**\$110.88:** *locks changed.*

The tenant does not dispute that the keys to the unit were not left with the landlord at the time when tenancy ended on August 31, 2012, as required by section 37 of the Act, as above. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

**\$100.00:** *filing fee.*

As the landlord has achieved more than a nominal measure of success with this application, I find that she has established entitlement to the full amount claimed.

**Sub-total: \$1,419.55**



I order that the landlord retain the security deposit and the pet damage deposit in the combined amount of **\$875.00** (\$437.50 + \$437.50), and I grant the landlord a **monetary order** for the balance owed in the amount of **\$544.55** (\$1,419.55 - \$875.00).

Conclusion

The tenant's application is hereby dismissed.

I order the landlord to retain the tenant's security / pet damage deposits in the total amount of **\$875.00**.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$544.55**.

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: March 8, 2013

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Residential Tenancy Branch

