



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kendall Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MND, 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 damage 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.

The Landlord submitted documents to the Residential Tenancy Branch on November 13, 2012, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Landlord stated that she believes additional documents were submitted to the Residential Tenancy Branch on November 13, 2012, however they were not before me and the Tenant stated that she did not receive these additional documents. Given that the additional documents were not before me and the Tenant did not acknowledge receipt of them, I find it is likely that the Landlord did not include these documents in the evidence package.

The Tenant submitted documents to the Residential Tenancy Branch on January 16, 2013, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to compensation damage to the rental unit 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 May 01, 2010; that a condition inspection report was completed at the start of the tenancy; that the tenancy ended on May 30, 2012; that the parties met on May 31, 2012 for the purposes of

inspecting the rental unit; that a condition inspection report was not completed at that time; that the Landlord did not schedule another time to complete a condition inspection report; and that the Tenant signed a move-out worksheet on May 31, 2012.

The move-out worksheet was submitted in evidence by the Tenant. The parties agree that when this document was signed there was no reference to damages on the worksheet. The Agent for the Landlord acknowledged that the estimate for repairs, in the amount of \$863.20, was added to the document in the absence of the Tenant.

The Agent for the Landlord stated that she could not inspect the rental unit on May 31, 2012 because the Tenant had not fully cleaned and vacated the rental unit and that she completed a condition inspection report at a later date, in the absence of the Tenant. The Tenant stated that the rental unit was inspected on May 31, 2012 and that a condition inspection report could have been completed, as only the carpet needed to be cleaned on that date.

The Landlord is seeking compensation for replacing 4 ceiling tiles that were damaged when the toilet in the upper bathroom leaked and for spraying the ceiling joists to clean the "fecal matter" in the ceiling. The Agent for the Landlord stated that she does not know why the toilet leaked but she believes if the leak had been reported promptly to the Landlord the ceiling tiles would not have been damaged. She stated that the ceiling tiles were not damaged at the start of the tenancy.

The Tenant stated that she was never aware that the toilet in the rental unit was leaking so she could not have reported it to the Landlord. She stated that she did not notice the damaged ceiling tiles and that they could have been damaged at the start of the tenancy.

The Landlord is seeking compensation for repairing the toilet in the lower floor of the rental unit. The Agent for the Landlord stated that the toilet was not working properly at the end of the tenancy and that the Tenant did not inform the Landlord of a problem with the toilet. The Tenant stated that this toilet was working properly at the end of the tenancy.

The Landlord is seeking compensation for replacing a bathroom mirror. The Agent for the Landlord stated that there was a mirror in the bathroom at the start of the tenancy and that it was not there at the end of the tenancy. The Tenant stated that there was not a mirror in the bathroom at the start of the tenancy; that the Tenant installed a mirror during the tenancy; and that the Tenant took the mirror at the end of the tenancy.

The Landlord is seeking compensation for rekeying the exterior doors. The Agent for the Landlord stated that none of the keys to the rental unit were returned at the end of the tenancy. The Tenant stated that the keys to the unit, the mail key, and the garage door opener were all returned to the Landlord on May 31, 2012.

The Landlord is seeking compensation for replacing the bathroom fan. The Agent for the Landlord stated that the fan was not working at the end of the tenancy. The Tenant stated that the fan was working at the end of the tenancy.

The Landlord is seeking compensation for replacing the frosted glass in the pantry door. The Agent for the Landlord stated that the frosted glass was in good condition at the start of the tenancy and that some of the frosting was worn off at the end of the tenancy. The Tenant stated that some of the frosting was missing at the start of the tenancy and that the glass was not further damaged during the tenancy.

The Landlord is seeking compensation for repairing and painting the door jamb and wall around the door leading into the garage. The Landlord submitted photographs of the damaged areas, which she stated were taken in the first week of June of 2012. The Tenant stated that the door jamb was not damaged at the end of the tenancy.

The Landlord is seeking compensation for repairing two broken sprinkler heads on an underground irrigation system, which the Agent for the Landlord speculates were broken by the lawnmower. The Tenant stated that all the sprinkler heads were functioning properly when the system was shut down in 2012 and she does not know how the sprinkler heads were damaged.

The Landlord is seeking compensation for weeding the yard. The Agent for the Landlord stated that the yard needed weeding at the end of the tenancy and the Tenant stated that the yard was in reasonable condition at the end of the tenancy, given the time of year.

The Landlord is seeking compensation for repairing the cultured stone on the front of the house near the garage. The Agent for the Landlord stated that the stone was damaged and the Tenant stated that she is unaware of any damage.

The Landlord is seeking compensation for repairing holes in the walls that she assumes were caused by hanging pictures and for repairing a variety of "knicks" on the walls and trim.

The Landlord is seeking compensation for repairing the kitchen counter. The landlord submitted a photograph that shows the counter has been burned by a pot or similar shaped item. The Tenant stated that the burn was not there at the end of the tenancy. The Agent for the Landlord stated that the photograph was taken during the first week of June and the rental unit was not occupied in June. The Tenant agreed that nobody was living in the rental unit in June.

The Landlord is seeking compensation for repairing the trim around the bathroom counter. The Agent for the Landlord stated that the trim was in good condition at the start of the tenancy and that a piece of it was missing at the end of the tenancy. The Tenant stated that the piece was missing at the start of the tenancy and that the trim was not further damaged during the tenancy.

The Agent for the Landlord was not permitted to introduce evidence regarding damage to the curtains, as this claim was not included in the list of claims for \$1,217.36. I did not permit the Landlord to pursue this claim as the Landlord did not properly notify the other party of the claim, and proceeding with this claim would be prejudicial to the Tenant.

### 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.

I find that the Landlord has submitted insufficient evidence to establish that the toilet in the upper area of the rental unit leaked as a result of the actions or neglect of the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that shows why the toilet leaked.

I find that the Landlord submitted insufficient evidence to establish that the Tenant knew the toilet had leaked and that the Tenant failed to report the problem to the Landlord. In reaching this conclusion I was influenced by the testimony of the Tenant, who stated that she was not aware the toilet had leaked. I was also influenced by the photographs of the damaged ceiling. In my view, it is possible that the leak was a slow leak that would not be noticed by an inattentive individual, rather than a leak that would clearly be noticed because it leaked onto the floor.

As the Landlord has failed to establish that the Tenant was responsible for the leaking toilet or that the Tenant was aware of a problem with the toilet and failed to report it, I dismiss the Landlord's claim for repairing the ceiling tiles or spraying the joists to clean any "fecal matter".

I find that the Landlord has submitted insufficient evidence to establish that the toilet in the lower rental unit stopped working as a result of misuse or neglect. Even if I were to accept the Landlord's testimony that it did not work at the end of the tenancy, the Landlord has submitted no evidence to show that the toilet did not stop working as a result of normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for repairing the toilet.

I find that the Landlord has submitted insufficient evidence to establish that there was a mirror in the bathroom at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report or a photograph, that corroborates the Agent for the Landlord's testimony that there was a mirror in the bathroom at the start of the tenancy or that refutes the Tenant's testimony

that there were not a mirror in the bathroom at the start of the tenancy. As the Landlord has failed to establish that there was a mirror in the bathroom at the start of the tenancy, I find that the Landlord has failed to establish that the Tenant must replace the mirror. I therefore dismiss the Landlord's claim for replacing the mirror.

I find that the Landlord has submitted insufficient evidence to establish that the keys were not returned to the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Agent for the Landlord's testimony that the keys were not returned or that refutes the Tenant's testimony that they were returned. I therefore dismiss the Landlord's claim for rekeying the locks.

I find that the Landlord has submitted insufficient evidence to establish that the bathroom fan stopped working as a result of misuse or neglect. Even if I were to accept the Landlord's testimony that it did not work at the end of the tenancy, the Landlord has submitted no evidence to show that the fan did not stop working as a result of normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for repairing the bathroom fan.

I find that the Landlord has submitted insufficient evidence to establish that the frosted glass on the pantry door was in good condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report or a photograph, that corroborates the Agent for the Landlord's testimony that the glass was in good condition at the start of the tenancy or that refutes the Tenant's testimony that the glass was damaged at the start of the tenancy and that it did not sustain further damage during the tenancy. As the Landlord has failed to establish that the glass was in good condition at the start of the tenancy, I find that the Landlord has failed to establish that the Tenant damaged the glass during the tenancy. I therefore dismiss the Landlord's claim for replacing the glass in the pantry door.

I find that the Landlord has submitted insufficient evidence to establish that the door jamb leading into the garage was damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Agent for the Landlord's testimony that this damage occurred prior to the end of the tenancy or that refutes the Tenant's statement that the door was not damaged during the tenancy. Although the Landlord did provide photographs of the damage, the Landlord acknowledged that the photographs were taken during the first week in June, and it is entirely possible that this damage was done by someone attempting to break into the rental unit. As the Landlord has failed to establish that the damage was caused by the Tenant, I dismiss the Landlord's claim for repairing the damage.

I find that the Landlord has submitted insufficient evidence to establish that two sprinkler heads were broken as a result of misuse or neglect. In the absence of evidence that refutes the Tenant's testimony that the irrigation system was functioning properly at the end of last season, I find there is no evidence to support the speculation that the

sprinkler heads were broken by the lawn mower. I find it entirely possible that the sprinkler heads broke as a result of weather related forces, as underground sprinkler systems often experience damage in this manner. In the absence of evidence that establishes that the Tenant damaged the sprinkler heads, I dismiss the Landlord's claim for these repairs.

I find that the Landlord has submitted insufficient evidence to establish that the yard needed weeding at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Landlord's testimony that the yard needed weeding or that refutes the Tenant's testimony that the yard was in reasonable condition. I therefore dismiss the Landlord's claim for weeding the yard.

I find that the Landlord has submitted insufficient evidence to establish that the cultured stone on the house was damaged at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Landlord's testimony that the stone was damaged or that refutes the Tenant's testimony that the stone was not damaged during the tenancy. I therefore dismiss the Landlord's claim for repairing the stone.

Holes caused by from hanging art and minor damage to walls/trim is generally considered normal wear and tear. In the absence of photographs that show the damage exceeds normal wear and tear, I dismiss the Landlord's claim for these repairs, as tenants are not obligated to repair damage arising from normal wear and tear.

I find the Tenant's testimony that the kitchen counter was not burned at the end of the tenancy to be highly improbable. On the basis of the photograph submitted in evidence, I find that the counter was likely burned when a hot pot was placed on the counter. As the photograph was taken in June prior to anyone else moving into the rental unit, I find it illogical to conclude that the counter was burned after this tenancy ended. I therefore find, on the balance of probabilities, that the counter was damaged during the tenancy and that the Tenant is obligated to repair the damage.

In the estimate of repairs submitted in evidence, I find that a tradesman has declared that he can fix the counter for \$195.00. I therefore find that the Landlord is entitled to compensation in this amount.

I find that the Landlord has submitted insufficient evidence to establish that the trim around the bathroom counter was in good condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report or a photograph, that corroborates the Agent for the Landlord's testimony that the trim was in good condition at the start of the tenancy or that refutes the Tenant's testimony that the trim was damaged at the start of the tenancy and that it did not sustain further damage during the tenancy. As the Landlord has failed to establish that the trim was in good condition at the start of the tenancy, I find that the

Landlord has failed to establish that the Tenant damaged the trim. I therefore dismiss the Landlord's claim for repairing the trim.

I find that the Landlord's application has merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$245.00, which is comprised of \$195.00 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$245.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, 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: March 05, 2013

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Residential Tenancy Branch

