



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kelowna Reservation Centre/ Om'ax Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security and pet deposits?

### Background and Evidence

The parties agree that this tenancy started on May 01, 2012 for a fixed term that was due to end on May 30, 2013. Rent for this unit was \$1,700.00 per month and was due on the 31<sup>st</sup> day of each month. The tenants paid a security deposit of \$850.00 and a pet deposit of \$300.00 on May 03, 2012. Both parties attended the move in and the move out inspection and the tenants provided their forwarding address in writing to the landlord on January 30, 2013.

The landlord testifies that the tenants failed to leave the rental unit in a clean condition at the end of the tenancy. The landlord testifies he engaged a cleaner who came to clean the unit and an extensive list of work completed has been provided in evidence. The landlord testifies that the stainless steel sink in the kitchen was of a high end stainless steel and this was left very dirty, The stove and oven still required cleaning, the fridge had food particles left inside and the outside had not been wiped, the dishwasher was left dirty, there was dog hair in one of the closets, the shower stall was dirty and the baseboards were dirty. The landlord has provided some photographic evidence and a copy of the invoice for the cleaning has been provided in evidence. The landlord seeks to recover the sum of \$238.50.

The landlord testifies that the tenants had failed to clean the carpets and had kept a pet in the unit. The tenants did however agree the landlord could retain an estimated amount of \$150.00 for carpet cleaning on the move out inspection report. The landlord has provided a copy of the carpet cleaner's invoice for \$125.00 and seeks to retain this from the security deposit.

The landlord testifies that there were some minor chips on the wall in the entrance area which the tenant had tried to repair but these had to be redone and painted. The tenant had also filled and painted the holes left from picture hangers. The landlord testifies the wall in this area was green and the tenant had used what looked like a white filler or paint. The sun had faded this wall so the landlord had to repaint the wall. The landlord

agrees the unit was last painted five years ago. The landlord has provided some photographs in evidence and a painting/ repair invoice for the sum of \$158.82.

The landlord testifies that the tenants were responsible for damage to the hottub. The landlord testifies that the tenants had turned off the hottub but not informed the landlord so the landlord could empty the hottub and winterize it. Due to this the repair person from the hottub company stated that the seal had leaked which caused the motor to burn out. The landlord testifies that the hottub had been serviced before the tenants moved into the unit. The tenants were given instruction on how to operate and maintain the hottub and were told to go to a pool and spa company for information as to the maintenance of the hottub or turn the hottub off. The landlord testifies that the tenants did not maintain the chemicals in the hottub and this caused hard water to get into the mechanism which seized the motor. The landlord testifies the hottub is five years old but was only used for 12 to 18 months. The landlord seeks to recover the cost of the repair to the motor and mother board at a sum of \$1,394.96 and an invoice and photographs showing the corroded motor have been provided in evidence.

The landlord testifies that the addendum to the tenancy agreement informs the tenants that a charge of \$100.00 will be made if the tenants end the tenancy before the end of the fixed term lease. This sum is used for advertising purposes to re-rent the unit. The landlord testifies that as the tenants did end the tenancy before the lease expired and the tenants must pay this fee of \$100.00 to the landlord.

The landlord seeks to keep the security and pet deposit in partial satisfaction of this claim and seeks to recover the \$50.00 filing fee from the tenants.

The tenants dispute the landlords claim. The tenant PP testifies that they cleaned the unit thoroughly at the end of the tenancy and the tenants have provided photographic evidence showing how clean the unit was when they left it. The tenant testifies that they are very clean tenants and show respect for the rental unit. The tenant testifies that they

are not professional cleaners however the tenants' feel the unit was left in accordance to their responsibility under the *Act*.

The tenant testifies that the composition of the stainless steel sink does make the sink look as if it is unclean however the sink was left clean at the end of the tenancy. The tenant FH testifies that they take great pride in their home and their photos show how cleanly they lived in the unit. The tenant testifies that the bathroom has a slate material which never looks clean no matter how the tenants cleaned it. The minerals in the water leave marks on this slate material. The tenant testifies that the landlord's partner stated to the tenants that this bathroom was very difficult to clean.

The tenant PP testifies that the chip marks in the entrance were very minor but the tenant filled them with drywall compound along with any holes left by picture hooks; all the landlord would have to do then would be to sand and paint. The tenant testifies that this was done as a courtesy to the landlord and is not required of the tenants under the *Ac* as it was normal wear and tear. The tenant testifies that they received no instruction from the landlord about what type of picture hooks to use or how to fill any holes. The tenant testifies that they did not paint the unit and if the wall was faded from the sun then it would be the landlord's responsibility to paint the unit after five years.

The tenant disputes the landlords claim that they damaged the hottub. The tenant PP testifies that the landlord only gave the tenants some verbal instructions as to the use of the hottub and told the tenants to get advice from a pool and spa company. The landlord said the tenants could either use the hottub or turn it off. The landlord did not tell the tenants to inform the landlord if they decided to turn the hottub off. No written directions were found in the unit and nothing is documented as to the tenants' reasonability to the hottub in the tenancy agreement or addendum. The tenant testifies that at the start of the tenancy they were told someone would replace the water and service the hottub. The tenant testifies that the landlord has provided no evidence to show the condition of the motor at the start of the tenancy.

The tenant testifies that the hottub was located over their bedroom and the second night they lived in the unit they found the hottub to be so noisy that they turned it off.

The tenant FH testifies that they have never owned or operated a hottub and were only given the choice as to use it or turn it off. When the tenants were moving out they turned the hottub on again but it was still very noisy. The tenants refer to a note in the landlord's evidence from another tenant who placed the note on the unit door after the tenants had moved out complaining about the noisy hottub.

The tenant disputes the landlords claim for a termination fee. On reflection the tenants agreed this fee is documented in the tenancy agreement addendum.

The landlord argues that the note from the other tenant about the noisy hottub was left on the unit door the night the tenants moved out while the landlord was running the hottub overnight. The landlord testifies that he spoke to those tenants who said they had never heard the hottub before. The landlord argues that the bathroom was not cleaned sufficiently. The landlord does however agree that this bathroom is difficult to clean if the correct cleaning agents are not used. The landlord agrees that he did not advise the tenants that this material must be cleaned regularly and with a natural product.

The landlord argues that the instruction manuals were left in the unit somewhere for the hottub. The landlord argues that the hottub was not noisy before the tenancy started and had been serviced however there is a slight drumming noise which can be heard in the bedroom when the hottub is on. The landlord argues that if the tenants had not used the hottub in December it would have frozen and the tenants did not tell the landlord that they were not going to use it.

The tenants argue that they did not find any written instruction for the hottub in the unit and the landlord did not tell the tenants to notify the landlord if they turned of the hottub.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlords claim for cleaning the unit for \$238.50. The cleaning list provided by the landlords cleaner is extensive and far exceeds the cleaning the landlord has mentioned at the hearing. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. The tenants photographic evidence shows the unit was left in a reasonable clean condition and while

I agree that the landlords photos do show some areas that appear to be unclean beyond a reasonable level in the bathroom the landlord explained that this area is difficult to clean and required more specialized instruction and products and the tenants were not given specific instructions on how to clean this type of material. Consequently I must dismiss the landlords claim as the landlord has not shown that the tenants were negligent in leaving the rental unit unreasonably clean.

With regards to the landlords claim for carpet cleaning; as the tenants have agreed in writing that the landlord may deduct the sum of \$150.00 from the security deposit I find as the invoice was only for \$125.00 then the landlord is entitled to deduct **\$125.00** from the security deposit.

With regard to the landlords claim for painting and repairs; I refer the landlord to the Residential Tenancy Policy Guidelines # 1 which provided for the responsibilities for painting and repairs and states, in part,

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. A tenant would only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

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.

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The useful life element table describes the useful life of interior paint and states that the useful life of interior paint is four years therefore the landlord would be required to paint the unit at this time and the responsibility is not the tenants particularly when the landlord agrees the unit was last painted five years ago and the paint on the living room wall had faded in the sun. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for the hottub repair; I am not satisfied that the landlord mitigated the loss in this matter by giving or showing the tenants where the written instructions were for the hottub or stating in writing to the tenants that if the hottub is turned off then they must notify the landlord so the hottub could be emptied and winterized. A landlord cannot assume that a tenant would be familiar with the workings or maintenance of a hottub in a rental unit. Consequently I find the landlord cannot hold the tenants responsible and has not shown that the hottub was damaged through the tenants' deliberate actions or neglect. This section of the landlords claim is also dismissed.

With regard to the landlords claim for a \$100.00 fee if the tenants end the tenancy before the end of the fixed term; I find this fee is documented in the addendum to the tenancy agreement and the tenants did end the tenancy early. Therefore the landlord has established a claim for **\$100.00** fee and may deduct this from the security deposit.

As the landlord has only been partially successful with this claim I find the landlord may recover half the \$50.00 filing fee to the sum of **\$25.00**. This sum will also be deducted from the security deposit.

Security and pet deposit	\$1,150.00
Less carpet cleaning	(-\$125.00)
Less ending tenancy early fee	(-\$100.00)
Less filing fee	(-\$25.00)
Total amount to be returned to the tenants	\$900.00

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may deduct the sum of \$250.00 from the security deposit. The balance of the deposits of \$900.00 must be returned to the tenants.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$900.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: April 02, 2013

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Residential Tenancy Branch

