



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as 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 deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee.

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

Pursuant to a written tenancy agreement, only a portion of which is in evidence before me, the tenancy began on September 1, 2010. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. There is no move-in condition inspection report in evidence.

The landlord issued a 1 month notice to end tenancy for cause dated November 30, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is December 31, 2012. Reasons identified on the notice in support of its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit / site

Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Subsequently, by letter dated December 1, 2012, the tenants gave notice to end tenancy effective February 1, 2013. Thereafter, the tenants vacated the unit on January 29, 2013. There is no move-out condition inspection report in evidence.

The parties agree that the tenants provided the landlord with a forwarding address in writing on January 29, 2013. The landlord's application for dispute resolution was filed on February 5, while the tenants' application was filed on February 8, 2013.

### Analysis

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

For information, the attention of the parties is drawn to the following particular sections of the Act:

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**

Based on the documentary evidence and testimony of the parties, the various aspects of the respective claims and my findings around each are set out below.

### **LANDLORD**

**\$175.84:** *rug cleaning.*

Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading CARPETS, provides in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets

after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

During the hearing the tenants acknowledged that they did not undertake to have the carpets cleaned at the end of what was a tenancy lasting more than two years. Documentary evidence submitted by the landlord includes a receipt for the cost claimed. I find that the landlord has established entitlement to the full amount claimed.

\$16.80: *2<sup>nd</sup> hand replacement closet door.*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

There is apparently no dispute that the closet door was not new when the tenancy began, and the tenants testified that it became dysfunctional early in the tenancy. As a result, the tenants testified that they removed it from the entrance way to the closet and set it to one side. In the absence of a receipt in support of the amount claimed, and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the landlord's application is hereby dismissed.

\$342.81 (\$192.81 - *paint and supplies* + \$150.00 - *labour for painting*).

In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the landlord's application is hereby dismissed.

\$2,660.00: *estimate for repair to balcony.*

Further to the fact that this cost is an estimate, such that no actual cost has been incurred by the landlord, these tenants were not apparently the only tenants with access to the balcony. Additionally, there are no comparative results before me of move-in and move-out condition inspection reports. In short, this aspect of the landlord's application is hereby dismissed.

\$266.00: *general unit cleaning.*

The landlord and / or friends & family members undertook to clean the unit at the end of this tenancy. It is understood that the amount claimed reflects an estimate of cost which was obtained from a professional cleaner.

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

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.....

The tenants testified that they undertook to leave the unit reasonably clean at the end of tenancy. However, while there are no comparative results of move-in and move-out condition inspection reports in evidence, during the hearing the tenants acknowledged that they did not take an opportunity to properly clean the oven. In the result, I find that the landlord has established entitlement limited to **\$25.00**.

\$18.87: *door lock.*

It is understood that this lock is affixed to a door which enters onto a common area. I find that the landlord has failed to meet the burden of proving that the tenants are responsible in some way by their actions for the replacement of this lock. This aspect of the landlord's application is therefore hereby dismissed.

\$19.04: *registered mail.*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord's application is hereby dismissed.

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## **TENANTS**

\$3,600.00 (3 x \$1,200.00): *3 months' rent for breach of the right to quiet enjoyment.*

Further to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**, Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment," and provides in part as follows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

There is no detailed evidence before me of particular occasions or times when the tenants considered that their right to quiet enjoyment had been breached. Further, there is no evidence that the tenants ever formally documented any of their concerns in this regard during the term of tenancy, and presented them to the landlord for action or a response. In the result, I find that the tenants have failed to meet the burden of proving entitlement arising from the alleged breach of the right to quiet enjoyment. This aspect of the tenants' application is therefore dismissed.

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The respective applications to recover the filing fee are both hereby dismissed.

Following from all the above, I order that the landlord retain **\$200.84** (\$175.84 + \$25.00) from the tenants' security deposit of **\$600.00**, and repay the balance to the tenants in the amount of **\$399.16** (\$600.00 - \$200.84).

#### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$399.16**. Should it be necessary, this order may be filed in the 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: April 30, 2013

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Residential Tenancy Branch

