



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 17, 2013, by the Landlord, to obtain a Monetary Order for: damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that each Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on January 18, 2013. Canada Post tracking receipts were provided in the Landlords' evidence. Each Tenant had provided their forwarding address to the Landlord back in June 2012. M.B.'s registered mail was returned unclaimed; however J.G.'s was never returned to the Landlord. Case law provides that refusal to pick up registered mail does not avoid service. Based on the submissions of Landlords I find that each Tenant is deemed served notice of this proceeding as of January 23, 2013, five days after they were mailed, in accordance with section 90 of the Act; and I continued in the Tenants' absence.

### Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; a notice to end tenancy issued by the Tenants; the move in and move out condition inspection report forms dated December 29, 2010 and June 30, 2012 that were signed by both parties; a settlement agreement signed by the Tenants; the Tenants' written permission authorizing the Landlord to retain the security deposit; photos of the rental unit; an invoice for advertising the unit; a monetary order worksheet; a predetermined cost of cleaning and repairs charged to tenants; and a invoice issued by the Landlord to the Landlord charging for repairs and cleaning.

The Landlord affirmed the Tenants entered into a fixed term tenancy agreement that began on January 1, 2011 which switched to a month to month tenancy after December 31, 2011. Rent was payable on the first of each month in the amount of \$880.00 and in December 2010 the Tenants paid \$440.00 as the security deposit.

The Landlord confirmed that on May 31, 2012, the Tenants provided written notice to end the tenancy effective June 30, 2012. When they vacated the unit they left it dirty, damaged, and with a large amount of debris and possessions to be disposed; which was supported by the move out condition inspection report form and the photos they provided in evidence. The Landlord advised that the Tenants had agreed to make payments towards the damages; however, no payments were ever received.

The Landlord is seeking compensation comprised of \$350.00 for cleaning, \$200.00 for carpet cleaning, \$500.00 for replacement drapes, and \$300.00 for hauling and dumping of garbage. The Landlord did not provide evidence as to the actual age of the drapes; however, she argued they were relatively new. She stated that she could not provide the exact cost to purchase the drapes because the Landlord buys them in bulk. The Landlord confirmed that she did not provide photos of the staining or damage caused to the drapes. She did however, note that the move out inspection report form indicates that both the bedroom and living room drapes need to be replaced.

The Landlord advised that she could not provide testimony as to the actual cost of landfill fees to remove or dispose of the Tenants' possessions because they combine loads when taking trips to the landfill. She stated that she has knowledge that they were charged additional fees for dumping mattresses but could not provide the actual amount.

In support of the amount claimed the Landlord is relying on an invoice created by their company. She argued it was created from their maintenance department and billed to the rental department. The invoice was generated listing amounts charged as listed on the Landlord's published list of flat rate charges provided to the Tenants. The Landlord confirmed that all labour for cleaning, carpet cleaning, and removal of debris is provided by the Landlord's staff members.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly, an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The actual value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the foregoing, I accept the undisputed evidence and find the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Upon review of the evidence I find the Landlord has provided insufficient evidence to prove or verify the actual value of the losses or damages claimed for the drapes and landfill fees. The Landlord failed to provide invoices or receipts for the actual cost of purchasing the drapes; they failed to provide evidence as to the actual age of the drapes; and they did not provide receipts for landfill dumping fees. Instead, the Landlord relied on rounded off flat rate amounts they provided to the Tenant and a self generated invoice.

In the absence of proof to the contrary, the possibility exists for the amounts being charged to be grossly inflated which would not meet the test to prove the actual cost of the loss. Accordingly, I find there to be insufficient evidence to meet the test for damage or loss, as listed above, for losses pertaining to the drapes and landfill disposal fees. Accordingly, the claims for those items are dismissed, without leave to reapply.

Notwithstanding the aforementioned, I accept the Landlord's testimony that labour to complete the cleaning, removal of debris, and steam cleaning of the carpet was provided by their staff at \$25.00 per hour plus they had to dispose of the Tenants' possessions in a manner that would have caused them to suffer a loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find the Landlord is entitled to monetary compensation for cleaning, carpet cleaning, and removal and disposal of debris and possessions in the amount of **\$700.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages & loss	\$700.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$750.00</b>
<b>LESS:</b> Security Deposit \$440.00 + Interest 0.00	<u>-440.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 310.00</u></b>

#### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$310.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: April 11, 2013

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Residential Tenancy Branch

