



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 6, 2013, by the Landlord for damage to the unit, site or property, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates that each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 7, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant is deemed served notice of this proceeding on March 12, 2013, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's 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: Canada Post receipts; photos; the tenancy agreement; move in and move out condition inspection report forms; and a 1 Month Notice.

The Landlord testified that the Tenants entered into a fixed term tenancy that began on October 1, 2011 and was set to switch to a month to month tenancy after six months. Rent was payable on the first of each month in the amount of \$900.00 and on October 1, 2011 the Tenants paid \$450.00 as the security deposit. The Tenants attended the move in inspection on September 15, 2011; however, no one on behalf of the Tenants attended the move out inspection which was conducted on March 4, 2013.

The Landlord stated that on January 7, 2013, the Tenants were served a 1 Month Notice to end tenancy that was effective on February 28, 2013. The Landlord confirmed

that he never discussed scheduling a move out inspection with the Tenants and he did not issued a notice for final opportunity to attend inspection.

The Landlord said the Tenants did a late night move and when the Landlord checked the unit on February 28, 2013 he found the unit had been vacated. The Tenants left the keys inside the rental unit with a note listing the Tenants' forwarding address. The Landlord said the unit was left unclean and with some damage. The Landlord performed the move out inspection on March 4, 2013, in the absence of the Tenants.

The Landlord is seeking to recover \$180.00 from the security deposit to cover the following charges:

- \$20.00 for cleaning four light fixtures (4 x \$5.00)
- \$10.00 for to replace two light bulbs (2 x \$5.00)
- \$40.00 to clean and touch up paint on two sets of bi-fold doors (2 x \$20.00)
- \$25.00 to reinstall and replace plastic clips on one set of bi-fold doors
- \$25.00 to replace broken floor transitional pieces
- \$60.00 to replace two vertical blind vanes (2 x \$30.00)

The Landlord confirmed that the amounts that are listed above are pre-set flat rate amounts determined by their head office. Tenants are not provided a price list of charges in advance and they are not given the opportunity to discuss the costs to make a choice on if they wish to complete the work on their own. No receipts were provided by the Landlord to support these amounts.

### 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.

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

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 aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental requiring some cleaning and with some damage at the end of the tenancy.

In this instance, I find the Landlord has provided insufficient evidence to prove or verify the actual value of the losses or damages claimed. The Landlord did not provide invoices or receipts showing the actual cost of the light bulbs, paint or plastic pieces used on the doors, the vertical blind vanes. Nor did they provide an accounting of the actual time it took to conduct the work. The amounts claimed were, simply put, flat rate charges the Landlord unilaterally decided, without consent from the Tenants, and with no supporting documents to prove their actual costs. I find the amounts charged to be excessive or inflated amounts.

That being said, *Residential Tenancy Policy Guideline #16* states that an Arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

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.

Based on foregoing, I hereby award the Landlord damages in the amount of **\$35.00** (\$15.00 for parts plus \$20.00 for labour).

The Landlord has primarily been successful with his application; therefore, I award recovery of the filing fee in the amount of **\$50.00**.

**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	\$ 35.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$ 85.00
<b>LESS:</b> Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
<b>Offset amount due to the TENANTS</b>	<b><u>\$365.00</u></b>

The Landlord is hereby ordered to return the security deposit balance of **\$365.00** to the Tenants forthwith.

### Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$365.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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: May 29, 2013

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Residential Tenancy Branch