



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD FF

### Preliminary Issues

In the details of dispute submitted by the Landlord she listed the three items being claimed which included: the cost of a bathroom mirror which the Tenants disposed of; unpaid rent for March 2013, and the filing fee. Based on this list, I find the Landlord explained her intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement and that she made a clerical error in not selecting this item on her application.

The Tenants attended the hearing and confirmed they received the aforementioned list from the Landlord. They advised that they provided evidence in response to the claim, as well as a photo they faxed to the Residential Tenancy Branch May 31, 2013.

Upon review of the above information, I accepted the Tenants' late evidence, in accordance with the *Rules of Procedure*, and I amended the application to include a request *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 7, 2013, by the Landlord.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the *Rules of Procedure*. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: their written submission; the tenancy agreement; addendum; e-mails between the parties; a statement from the Landlord's two agents; a move in and move out condition inspection report form; and envelopes sent to each Tenant by registered mail.

The Tenants submitted eighty pages of documentary evidence and several photos which included, among other things, copies of: their written submissions; various sections of the *Residential Tenancy Act* and fact sheets; various e-mails between the parties; their medical information; receipts; an advertisement off of the internet; and the move out condition inspection report form.

The parties confirmed that they entered into a written fixed term tenancy agreement that was set to begin on March 15, 2012 and set to expire on March 31, 2013. The Tenants did not occupy the rental unit as of March 15, 2012. Rent was payable on the first of each month in the amount of \$1,200.00 and on or before March 15, 2012 the Tenants paid \$600.00 as the security deposit. The Landlord scheduled a move in inspection to be conducted on April 30, 2012, at 3:00 p.m. The Tenants vacated the rental unit by February 28, 2013. The Tenants sent an e-mail on February 28, 2013 informing the Landlord that they had moved which included their forwarding address.

The Landlord's Agent testified that the Landlord had one of her neighbors act as her agent to conduct the move in inspection with the Tenant. When the neighbor saw the Tenant sitting in his car in the parking lot prior to the scheduled 3:00 p.m. time, he approached the Tenant and asked if they could conduct the inspection at that time as he was there. The Tenant refused and the two got into an argument. When the Tenant finally came in to conduct the inspection he refused to sign the condition inspection report form.

The Tenant, J.S. initially testified that he arrived at 3:00 p.m. on April 30, 2012, to conduct the inspection and at no time while he was in his car did anyone approach him and ask him to conduct the inspection early. Upon further discussion the Tenant stated he arrived at the unit parking lot at 2:00 p.m. and was sitting in his car reading the *Residential Tenancy Act* so he could understand his rights. He said he was upset that he saw a notice of entry posted to the rental unit door. When he arrived, he saw something taped to the door so he walked up to the door and read the notice of entry then he returned to his car. He said a second time that no one approached him while he was sitting in his car. He later changed this statement and confirmed that the Landlord's agent approached him and requested that he conduct the inspection early. He said he refused and they got into an argument.

The Tenant stated that he went into the rental unit at 3:00 p.m. to conduct the inspection as scheduled and at that time the Landlord's agent had already done the walk through and had the condition inspection form filled out. He insisted on going through each item, line by line, to ensure items were marked correctly. He pointed to the condition inspection form in evidence and noted how the coding of items had been changed. He said the changes were made at his insistence. He confirmed that he refused to sign the move in condition form and stated that he was not going to sign the form because the Landlord's agent refused to sign it. He said he did not think to sign the form acknowledging that he did not agree with it or to note that the agent refused to sign the form. He argued that the copy provided in evidence had to have been signed by the agent long after the inspection was completed.

The Tenant confirmed that he attended the move out inspection on March 25, 2013, as scheduled, and he signed the move out inspection report form.

The Tenant testified that as a result of the hassles and added stress caused by the Landlord at the beginning of their tenancy they resigned themselves to just staying in the rental unit until their house was built. He said to put it simply they were building a home and as soon as it was ready for occupancy they decided to move out. They never informed the Landlord that they were building a home and they never told her of their intent to move when the house was ready for occupancy. He confirmed that they did not provide the Landlord written notice that they would be moving out on a specific date. They vacated the unit as of February 28, 2013, and informed the Landlord that same day by e-mail. He confirmed they did not have an Order that would allow them to vacate early or relieve them of their responsibility to pay for March 2013 rent.

The Tenant submitted that upon moving into the unit they informed the Landlord that the bathroom mirror was broken and needed to be replaced. He said the Landlord provided

them with a mirror that was not a bathroom mirror and was a cheap kid's or hallway mirror. They did not like it so they threw it out without informing the Landlord.

In closing the Tenant stated that the Landlord's claim of over \$300.00 is outrageous because the mirror he threw out was not worth more than \$20.00. He confirmed that they did not provide the Landlord with thirty days written notice that they were moving out February 28, 2013. He stated that they believe the Landlord broke the lease agreement before they even occupied the unit. They chose not to make an application for dispute resolution to assist in resolving their issues because they did not want the stress.

The Landlord's agent confirmed that the Landlord did not submit a receipt for the original mirror which was thrown out by the Tenants. He claimed the Landlord no longer has the receipt as she did not expect to need it.

### 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 value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 of the *Residential Tenancy Act* stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord thirty days written notice to end the tenancy on a date that is not prior to end of the fixed term.

In this case, the undisputed evidence was that the fixed term tenancy was set to end on March 31, 2013 and the Tenants vacated the unit on February 28, 2013, without providing the Landlord with written notice. Based on the foregoing, I find the Tenants abandoned the unit, ending the tenancy in breach of section 45 of the Act. This breach caused the Landlord suffer a loss of rent for March 1, 2013. Accordingly, I award the Landlord loss of rent for March 2013, in the amount of **\$1,200.00**.

The *Residential Tenancy Act* stipulates that a landlord and tenant must attend a move in and move out inspection and complete the condition inspection report form. Upon review of the evidence before me I find that both parties were represented during the move in and move out inspections. Despite the move in report not being signed, I find that the condition inspection report form was properly completed listing the condition of the unit at move in and move out.

The undisputed evidence was the Tenants were provided with a mirror for the bathroom which they did not like and subsequently threw out. The Tenants' actions caused the Landlord to suffer a loss for the cost of a replacement mirror.

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. Throwing out the Landlord's property does not constitute reasonable wear and tear.

The Tenants have disputed the value of the mirror arguing that it was worth only \$20.00 and not over \$300.00 as claimed by the Landlord. The Landlord did not provide a receipt to prove the actual value of the mirror which was discarded.

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. *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.

In this case, in the absence of a receipt to prove the actual cost of the mirror that was discarded, I find that the Landlord is entitled to nominal damages in the amount of **\$20.00**.

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:

Loss of March 2013 Rent	\$1,200.00
Nominal damages for the mirror	20.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,270.00</b>
<b>LESS: Security Deposit \$600.00 + Interest 0.00</b>	<b><u>-600.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 670.00</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$670.00**. 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: June 3, 2013

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Residential Tenancy Branch

