



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, MNSD, MNDC, FF

### Introduction

On March 07, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were given the opportunity to submit documentary evidence prior to the hearing; to give relevant oral evidence at the hearing; to ask relevant questions; and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant by mail. The Tenant acknowledged receipt of those documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord by a third person. The Landlord acknowledged receipt of those documents and they were accepted as evidence for these proceedings.

### Preliminary Matter

On the Application for Dispute Resolution the Landlord declared that she was seeking a monetary Order in the amount of \$922.88 and in the "Details of Dispute" she provided a detailed calculation of that claim.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that a landlord may amend an Application for Dispute Resolution if the proceeding has not yet commenced; that if the Application has not yet been served to the respondent the applicant must submit an amended copy of the Application to the Residential Tenancy Branch and serve the amended copy to the respondent; and that if the Application for Dispute Resolution has already been served to the respondent and the applicant is able to serve the amended copy to the applicant at least seven days before the dispute

resolution hearing, the applicant will be permitted to file a revised Application for Dispute Resolution with the Residential Tenancy Branch. The Landlord has not amended the Application for Dispute Resolution in accordance with rule 2.5. I specifically note that including information about an additional claim in an evidence package is not the same as amending the Application for Dispute Resolution.

In the evidence package the Landlord mailed to the Tenant on April 30, 2013, the Landlord included a handwritten document in which she indicates that she is also claiming compensation, in the amount of \$112.50, for cleaning the oven and blinds. At the hearing the Landlord was advised that the Application for Dispute Resolution was not being amended to include this additional claim. In my view, amending the Application for Dispute Resolution at the hearing would be unfair to the Tenant, who was not properly notified of the increased claim.

In determining that the amendment should not be allowed, I was heavily influenced by the fact that evidence of the additional claim was not mailed to the Tenant until almost two months after the Application for Dispute Resolution was filed and five months after this tenancy ended. The Landlord should have known the oven and blinds required cleaning when she filed this Application for Dispute Resolution; she should have informed the Tenant of that claim at that time; and the Tenant should not be disadvantaged by this delayed notice.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for internet/cable fees, and to retain any portion of the security deposit?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2012; that the Tenant paid a security deposit of \$350.00; that the tenancy ended on November 01, 2012; that the Landlord did not complete a condition inspection report at the start or at the end of the tenancy; and that on November 01, 2012 the Tenant wrote his forwarding address on an envelope and gave it to the Landlord.

The Landlord is seeking compensation, in the amount of \$488.00, for the cost of cable and internet fees. The Landlord stated that cable/internet service was not included in the rent and the Tenant stated they were included in the rent. The Landlord stated that the Tenant used her cable and internet service without compensating her for the cost of those services. The Tenant stated that the Landlord allowed him to connect to her internet service and there was no agreement he would pay her for that service. The Landlord stated that she may have incurred additional costs for the internet service because the Tenant was her service, although she is not certain of that and she submitted no documents that demonstrate that she incurred additional costs.

The Landlord is seeking compensation, in the amount of \$110.88, for cleaning the carpet. The Landlord stated that the carpet was not shampooed at the end of the tenancy; that the carpet needed shampooing at the end of the tenancy; and that the Tenant did not offer to shampoo the carpet at the end of the tenancy. The Tenant stated that the carpet was vacuumed thoroughly at the end of the tenancy; that the carpet did not need to be shampooed at the end of the tenancy; that he owns a carpet shampooer so he asked the Landlord if she wanted the carpet shampooed; and that she told him not to shampoo the carpet because she wanted it cleaned professionally.

The Landlord submitted photographs of the rental unit that were taken prior to the end of the tenancy. She did not submit any photographs that show the condition of the carpet at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$224.00, for repairing damage to some of the walls of the rental unit. The Landlord submitted a receipt to show that she paid \$224.00 to repair and paint the bathroom; to repaint one bedroom wall; and to remove a mirror from the living room wall and to repaint that wall.

The Landlord and the Tenant agree that the Tenant mounted a mirror, which is the property of the Landlord, on the living room wall. The Tenant contends that the mirror was not mounted at the start of the tenancy; that the Landlord asked him to mount it in the bathroom; that he did not want it in the bathroom and he asked if he could mount it in the living room instead; that he asked the Landlord if she wanted it removed at the end of the tenancy; and that she told him he could leave it on the wall. The Landlord stated that she did not give him permission to install the mirror in the living room and she did not tell him that he could leave it on the wall at the end of the tenancy.

The Landlord and the Tenant agree that the Tenant removed a shelf from behind the toilet. The Landlord stated that the Tenant was not given permission to remove the shelf. The Tenant stated that he told the Landlord he wanted to remove the shelf and she did not say it could not be removed, which he interpreted to be consent. He stated that he repaired and painted the wall after removing the shelf. The Landlord agrees that the wall behind the toilet was repaired but she does not believe the repair was adequate.

The Tenant submitted a photograph of the wall behind the toilet, which does not appear to be in need of repair. The Landlord did not provide a photograph of this wall.

The Landlord contends that the Tenant installed a heavy towel rack in the bathroom and that he tightened the screws too tightly, which caused the wall to crack. She submitted a photograph of the damaged wall.

The Tenant contends that heavy towel rack was installed prior to the start of his tenancy and that the crack in the drywall was the result of improper taping and mudding.

The Landlord stated that the bedroom wall had been damaged when the Tenant's bed banged against the wall. She did not submit a photograph of the damage, which she described as a "slight mark".

The Landlord is seeking compensation, in the amount of \$100.00, for storage fees. The Landlord stated that when this tenancy began she informed the Tenant that he could use 70%-80% of the furnace room for storage; that when he arrived he had more property than she anticipated; that his property filled the entire furnace room; that he stored his bicycles in her garage; and that he stored his patio furniture in the yard. She stated that she never asked him to move his property nor did she ask him for extra money for the additional storage space, but she would now like an additional \$25.00 per month for the extra storage.

The Tenant stated that after he moved in he realized there was not enough storage space in the furnace room; that the Landlord allowed him to store his bikes in her garage; that she provided him with a key to access the garage; and; that the Landlord allowed him to store his patio furniture in the yard of the residential complex. He stated that he did not agree to pay additional rent in exchange for the additional storage space.

### Analysis

There is a basic legal principle that places the burden of proving that damages occurred on the person claiming compensation for damages, not on the person who is denying the damage. In these circumstances the burden of proving damage/loss rests with the Landlord.

Section 38(1) of the *Residential Tenancy Act (Act)* requires a landlord to either return the security deposit or file an Application for Dispute Resolution seeking to retain it within fifteen days of the date the tenancy ends and the date the landlord receives a forwarding address, in writing, for the Tenant. In these circumstances the Landlord was obligated to return the security deposit or file to keep it by November 16, 2012. As the Landlord did not return the full deposit and she did not file her Application for Dispute Resolution until March 07, 2013, I find that she has failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord fails to comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. As the Landlord has failed to comply with section 38(1) of the *Act*, I find that she must return double the security deposit to the Tenant, which is \$700.00.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord only if the landlord has suffered a loss as a result of the tenant not complying with the *Act*. As the Landlord has failed to establish that she paid more for her cable/internet service because the Tenant was using her services, I cannot conclude that she suffered a

financial loss as a result of that arrangement. As the Landlord has not established that she suffered a loss, I dismiss her application for compensation for cable/internet fees.

I find that the Landlord has submitted insufficient evidence to establish that the carpet needed shampooing at the end of this four month tenancy. In reaching this conclusion I was heavily influenced by the absence of independent evidence, such as photographs, that corroborates the Landlord's testimony that the carpet needed shampooing or that refutes the Tenant's testimony that the carpet did not need shampooing. As the Landlord has failed to establish that the carpet needed shampooing, I dismiss the Landlord's claim for cleaning the carpet.

Unless a tenant has explicit permission from a landlord to alter the rental unit, a tenant must restore the rental unit to its original condition at the end of a tenancy. I find that the Tenant has submitted insufficient evidence to establish that he had explicit consent from the Landlord to install a mirror in the living room and to leave it in place at the end of the tenancy. In reaching this conclusion, I was heavily influenced by the Landlord's testimony that she did not consent and by the absence of evidence that corroborates the Tenant's claim that the Landlord did consent.

As there is insufficient evidence to establish that the Tenant had consent to leave the mirror on the wall, I find that he was obligated to remove the mirror and repair any damage associated to the installation, pursuant to section 37(2) of the *Act*. As the Tenant did not comply with the obligation, I find that the Tenant is entitled to the cost of removing the mirror and repairing the wall.

The receipt submitted by the Landlord shows that she paid \$224.00 to repair and paint the bathroom; to repaint one bedroom wall; and to remove a mirror from the living room wall and to repaint that wall. Although it is difficult to determine precisely how much was paid for each of these repairs, I find it reasonable to conclude that 1/3 of this cost could be attributed to repairing and painting the living room wall. I therefore find that the Tenant must pay the Landlord \$74.67 for the cost of repairing the living room wall.

On the basis of the undisputed evidence, I find that the Tenant did not have the explicit consent of the Landlord to remove the shelf from behind the toilet. I therefore find that the Tenant was obligated to replace the shelf at the end of the tenancy, although I note that the Landlord has not made a claim for replacing the shelf. As the Landlord has not made a claim for replacing the shelf, I am unable to compensate her for that loss.

The Landlord has made a claim for repairing and painting the bathroom, which would include any repairs needed as a result of removing the shelf from behind the toilet. I find that the Landlord has submitted insufficient evidence to show that this wall was in need of repair at the end of the tenancy. In determining this matter I was heavily influenced by the absence of evidence that corroborates the Landlord's statement that the wall had not been adequately repaired; by the Tenant's statement that the wall had been repaired and painted; and by the photograph submitted in evidence by the Tenant,

which corroborates the Tenant's testimony that the wall was not in need of repair. I therefore dismiss the Landlord's claim for repairing this wall.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant damaged the bathroom wall behind the towel rack and I dismiss her claim for repairing this wall. In determining that the Landlord failed to establish the Tenant damaged the wall behind the towel rack, I was heavily influenced by the photograph submitted in evidence by the Landlord. In my view, the damage depicted in this photograph is more consistent with the testimony of the Tenant, who stated that the damage is the result of improper mudding and taping, than with the testimony of the Landlord, who stated that the damage is the result of over tightening screws.

In determining that the Landlord failed to establish the Tenant damaged the wall behind the towel rack, I was further influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant installed the towel rack in the bathroom or that refutes the Tenant's testimony that he did not install the towel rack. As the Tenant has readily acknowledged other changes he made to the rental unit, I am not inclined to believe that he would be dishonest about the towel rack, particularly because the damage to the wall does not appear to be related to the installation of the towel rack.

On the basis of the testimony of the Landlord, I find that there was only minor damage to the bedroom wall at the end of the tenancy, which she believes was the result of the Tenant's bed banging against the wall. On the basis of that description, I find that this damage should be considered normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for compensation for repairing the bedroom wall.

On the basis of the undisputed evidence, I find that the Tenant used more storage space at the residential complex than was anticipated under the original tenancy agreement; that the Landlord never asked the Tenant for more rent in exchange for the additional space; and that the Tenant never agreed to pay more rent in exchange for the additional space. I only have authority to enforce the terms of a tenancy agreement and to enforce the rights and obligations of both parties under the *Act*. As there is no evidence that the parties had an oral or written term in their tenancy agreement that required the Tenant to pay for additional storage, and there is nothing in the *Act* that requires a tenant to pay additional rent in these circumstances, I dismiss the claim for compensation for storage fees.

I find that the Landlord's application has some merit and that she is entitled to compensation for the \$50.00 paid to file this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim of \$124.67, which is comprised of \$74.67 for damages and \$50.00 for the filing fee, and I authorize her to retain this amount from the Tenant's security deposit. The Landlord is obligated to return \$575.33, which double the amount of the security deposit less the amount of this monetary claim.

I grant the Tenant a monetary Order in the amount of \$575.33. In the event the Landlord does not voluntarily comply with this Order, the Order may be served upon the Tenant, filed with the Small Claims Court of British Columbia, 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 *Act*.

Dated: May 31, 2013

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Residential Tenancy Branch