



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ESSENTIAL REAL ESTATE SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for compensation for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 15, 2013. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

It should be noted the Landlord’s first language is not English and as a result it was difficult to communicate and understand the Landlord’s testimony. The Landlord did not have a translator to assist her. The Landlord did ask the Arbitrator if the Residential Tenancy Branch could provide a translator for the Hearing and the Arbitrator indicated that was not possible.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to unpaid rent and if so how much?
5. Is there a loss or damage and if so how much?
6. Is the Landlord entitled to compensation for loss or damage and if so how much?

7. Is the Landlord entitled to retain the Tenants' security deposit?

Background and Evidence

This tenancy started on approximately February 1, 2011 as a month to month tenancy. Rent was \$1,100.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$575.00 in advance of the tenancy. This tenancy ended in February, 2013. No condition inspection reports were included in the evidence packages.

The Landlord said the Tenants left the unit in poor condition so she has applied for \$784.00 for cleaning costs, \$789.95 for painting the unit and \$1,175.79 in repairs to the unit. The Landlord said she included receipts for these costs and pictures to show the state of the unit when the Tenants moved out. The Landlord said the total monetary claim on her application is for \$2,749.44.

Further the Landlord said that she is claiming \$300.00 for unpaid rent for November, 2012 and \$1,100.00 in unpaid rent for each month of December, 2012, January, 2013 and February, 2013 for a total of \$3,600.00. The Landlord did not include these amounts in the application and there was no Notice to End Tenancy for unpaid rent that supported these claims with the application or the evidence package.

The Tenant said there was unpaid rent, but the Tenant said it was \$1,800.00.

The Tenant continued to say a move in condition inspection report was completed, but a move out condition report was not completed, because the Tenants were evicted for non payment of rent. The Tenant said they left the unit after they received the eviction notice and neither the Landlord nor the Property Management Company contacted them to do a move out condition inspection report. The Tenant said the unit was in poor condition when they move in. The Tenant continued to say the unit had not been painted on move in, the previous tenant left the unit dirty and the unit had been smoked in prior to the Tenants moving in. The Tenant said they left the unit in an unclean state, but they did not damage the unit.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

I find the Landlord is unable to establish the condition of the rental unit at the start of the tenancy and as there was no move out condition inspection report completed by the Landlord and the Tenant to establish the condition of the unit at end of the tenancy, the Landlord is unable to establish proof that the Tenants damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

The Landlord has provided pictures of the unit to support the Landlord's claim that the Tenants left the unit in a poor and unclean condition and the Tenant said they did not clean the unit when they move out. Consequently I find the Landlord has established grounds to be awarded the cleaning costs of \$784.00.

Further I accept the Tenant's testimony that the unit was not painted when the Tenants moved in and the previous tenant left the unit in poor condition and smoked in the unit; therefore I dismiss the Landlord's claim for painting the unit as it is not possible to determine the state of the unit when the Tenants moved in.

With respect to the Landlord request for unpaid rent of \$3,600.00, I find the Landlord did not include this amount in the application so the Tenants did not know the Landlord was claiming for unpaid rent in this application. As well the amount of unpaid rent is in dispute the Landlord says the amount is \$3,600.00 and the Tenant says the amount is \$1,800.00 and neither party have provided any evidence to support their testimony. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently, I dismiss the Landlord's claim for unpaid rent **with leave to reapply**.

Section 24 and 36 says a Landlord must complete a move in and move out condition inspection and if the Landlord does not then the Landlord's right to retain the Tenants' security deposit for damages is extinguished. The Landlord did not submit the move in condition inspection which was reportedly completed and a move out inspection was not completed; therefore I dismiss the Landlord's application to retain the Tenants' security

deposit for damages to the rental unit without leave to reapply. The Landlord is at leave to request the security deposit for unpaid rent if a future application is made.

As well, as the Landlord was only partially successful in this matter I dismiss the Landlord's application to recover the filing fee of \$50.00 from the Tenant.

### Conclusion

A Monetary Order in the amount of \$784.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 13, 2013

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Residential Tenancy Branch