



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

The Tenant states that she did not receive a complete set of the Landlord's 2<sup>nd</sup> evidence package which contained a two page letter and copies of 4 post dated cheques. The Landlord states that the only items missing are 4 photographs of the rental unit which depict the state of the rental unit before the Tenancy began. During the hearing it was explained to both parties that this evidence package by the Landlord was missing and that a search would be conducted as the Landlord states that it was personally delivered to the Residential Tenancy Branch Office in Kelowna sometime around May 28, 2013 and that if found the evidence package would be referred to in the process of making this decision. A search was made and the Landlord's evidence package was found complete with the 4 photographs. It will form part of the evidence referred to in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

The Landlord seeks a monetary claim of \$3,377.88. This consists of \$300.00 in unpaid rent arrears. The Landlord states that the Tenant failed to pay the complete rent of \$1,175.00 per month and was in arrears for \$75.00 X 4 months to equal the \$300.00. The Tenant states that this was unpaid because their subtenant was only paying \$1,100.00 per month for that 4 month period. The Landlord also seeks \$120.00 from the Tenant for cleaning costs paid to the subtenant by the Landlord. The Landlord relies on a letter from the subtenant which states that it took her 5 hours of cleaning after she moved in. The Tenant disputes this stating that she frequently cleaned the bathtub during the tenancy and that the rental was left in a satisfactory condition. The Tenant also notes that no condition inspection reports for the move-in or the move-out were completed. The Landlord seeks \$782.88 for recovery of damaged blinds. The Tenant disputes this claim. The Landlord relies on an estimate for blinds for a total of \$699.00. The Landlord also clarified that this estimate was based upon her observations of the least expensive cost and have not yet been replaced. The Landlord also seeks \$2,000.00 for the cost of an insurance deductible for the replacement of damaged carpets. The Tenant disputes this claim stating that there was no damage and refers to the photographs submitted in the Tenant's evidence package. The Landlord also seeks \$175.00 for recovery of damage costs to walls and the replacement cost of a door. The Tenant disputes this claim stating that there was no damage. The Landlord claims that the laundry room door was damaged and that an access panel needs to be replaced as it was damaged during the tenancy. The Landlord relies on a visual estimate and is unable to provide any details for this portion of the claim. The Landlord clarified that none of the work being claimed has been done or any costs incurred.

### Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claim #1, I find that the Landlord has established a claim for the \$300.00 in rent arrears. Both parties agreed that the subtenant was only paying \$1,100.00 in rent to the Landlord instead of the \$1,175.00 as agreed upon in the signed tenancy agreement. The Landlord is entitled to recovery of \$300.00 in rent arrears.

Claim #2, the Landlord, J.F. claim for \$120.00 has not been established. Although there is a letter from the subtenant, N.B. to the Landlord, J.F. that 5 hours of cleaning was required and the Landlord compensated the subtenant \$120.00 for this cleaning, it is disputed by the Tenant, K.H. Without any supporting details the Landlord has failed to support the claim. The burden of proof lies with the Landlord who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. This portion of the monetary claim is dismissed.

Claims #3, #4 and #5 have failed. The Landlord has failed to provide sufficient evidence that there is proof of any damages to the rental property or that the any damage was caused by the Tenant. The Landlord states that the amounts claimed are based upon estimates that she visually collected, but cannot provide any details for. The Landlord has also stated in her direct testimony none of the items claims have been repaired or replaced. The Landlord has not provided a true account of an actual amount of any losses. These portions of the monetary claim are dismissed.

Although the Landlord has made an application to retain the security deposit, the Landlord has failed to provide any details of the security deposit. The submitted copy of the signed tenancy agreement does not disclose any security deposit taken. The Landlord's details of dispute also state that, "Tenant left security deposit of \$550.00 for rent from Dec. 1-15<sup>th</sup>, 2012. I decline to make any order regarding the disposition of the security deposit.

The Landlord has established a total monetary claim of \$300.00. The Landlord is entitled to recovery of the \$50.00 filing fee. The Landlord is granted a monetary order for \$350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$350.00.

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: July 09, 2013

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Residential Tenancy Branch