



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MRB Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MND, MNDC, MNSD and FF

### Introduction

This hearing was convened in response to cross applications.

On June 03, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

On August 12, 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; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The female Agent for the Landlord stated that on August 13, 2013 the Landlord served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant with the initials "T.H." stated that on June 03, 2013 the Tenant served the Landlord with the Application for Dispute Resolution and the Notice of Hearing, via registered mail. The Tenant with the initials "T.H." stated that on August 20, 2013 the Tenant served the Landlord with documents the Tenant wishes to rely upon as evidence, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The female Agent for the Landlord stated that on August 20, 2013 the Landlord submitted additional documents to the Residential Tenancy Branch, a copy of which

were served to the TT. The Tenant acknowledged receipt of the additional documents. These documents were not before me at the time of the hearing or by the time I rendered this decision. The Landlord declined the opportunity to adjourn the matter to provide the Landlord with the opportunity to submit a duplicate copy of the documents to the Residential Tenancy Branch. Rather, the Landlord opted to proceed with the hearing with the understanding that if the Landlord felt it necessary to rely on any of the documents submitted to the Residential Tenancy Branch on August 20, the Landlord could request an adjournment. The Landlord did not request an adjournment at any point in the hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental and should the security deposit be returned to the Tenant?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2005; that it ended on April 30, 2013; that the Tenant did not vacate the unit until May 01, 2013; that the Tenant paid a security deposit of \$390.00 on August 06, 2005 or August 23, 2005; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord returned \$332.63 of the deposit on May 24, 2013, by regular mail; and that the Tenant provided the Landlord with a forwarding address, in writing, on March 31, 2013 or April 01, 2013.

The Landlord is seeking compensation for replacing the fridge. The female Agent for the Landlord stated that the fridge was in good condition at the start of the tenancy; that it was approximately 18 years old at the end of the tenancy; that there was a burn in the floor of the freezer at the end of the tenancy; that the door of the fridge was cracked in several places at the end of the tenancy; and that the cracks in the door had been repaired with duct tape.

The Tenant with the initials "T.H." stated that there were several cracks in the door of the fridge at the start of the tenancy; that during the tenancy they repaired the cracks with duct tape; and that the floor of the freezer was burned at the start of the tenancy.

The female Agent for the Landlord stated that there was a condition inspection report completed at the start of the tenancy; that the Landlord is unable to locate that report; that several documents belonging to the Landlord were damaged by water; and that she believes the condition inspection report was one of the documents damaged by water.

The Landlord submitted a letter from an agent for the Landlord who worked for the Landlord at the start of the tenancy, in which she declared that she would not have rented a fridge in this condition to the Tenant.

The Landlord submitted photographs of the damage to the fridge.

The Landlord is seeking compensation for replacing a stove fan. The female Agent for the Landlord stated that the fan was in place at the start of the tenancy and was missing at the end of the tenancy. The Tenant with the initials "T.H." stated that there was never a fan above the stove.

The Landlord is seeking compensation for cleaning the carpets, which the female Agent for the Landlord stated required cleaning at the end of the tenancy. The Tenant with the initials "T.H." stated that at the end of the tenancy the carpets were cleaned with a carpet cleaner owned by the Tenant, and that further cleaning was not required.

The female Agent for the Landlord stated that there is a written tenancy agreement which requires the Tenant to have the carpet professionally cleaned at the end of the tenancy. The tenancy agreement was not submitted in evidence. The Tenant with the initials "T.H." stated that there is no written tenancy agreement.

The Landlord is seeking compensation for cleaning the walls, which the female Agent for the Landlord stated required cleaning at the end of the tenancy. The Tenant with the initials "T.H." stated that the walls were washed at the end of the tenancy and that further cleaning was not required.

The Landlord is seeking compensation for disposing of personal garbage and miscellaneous pieces of furniture which were left beside the garbage bin. The male Agent for the Landlord stated that during the latter part of April he removed several items from the area around the garbage bin, most of which was in garbage bags. He could not specifically recall the nature of the furniture that was left at the bins. He stated that he did not see the Tenant leave these items at the garbage bin but he was advised by the on-site manager that the items were left there by the Tenant.

The Tenant with the initials "T.H." stated that they did not dispose of any items of furniture in the garbage bins.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the full amount of the deposit and the Landlord did not file an Application for Dispute Resolution seeking to retain any portion of the deposit within 15 days of when the tenancy ended on April 30, 2013 or when the Landlord received the Tenant's forwarding address on March 31, 2013 or April 01, 2013.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection

38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest due on the original amount.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the fridge door was not cracked at the start of the tenancy or that the freezer floor was not burned. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony that the fridge was in good condition at the start of the tenancy or that refutes the Tenant's testimony that it was damaged at the start of the tenancy. Although two agents for the Landlord contend that the damage did not exist at the start of the tenancy, I note that memories deteriorate over time and that this tenancy began almost 8 years ago.

As the Landlord has failed to establish that the fridge was in good condition at the start of the tenancy, I cannot conclude that the Tenant damaged the fridge during the tenancy. I therefore dismiss the claim for repairing the fridge.

In determining this matter I note that the Tenant acknowledged that they repaired the fridge with duct tape during the tenancy. I find it reasonable to believe that a tenant would make these repairs in an effort to prevent the cracks from becoming worse.

I find that the Landlord has submitted insufficient evidence to establish that there was a fan above the stove at the start of this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the testimony that there was a fan at the start of the tenancy or that refutes the Tenant's testimony that there was not a fan. As the Landlord has failed to establish that there was a fan in place at the start of the tenancy, I dismiss the claim for replacing the fan.

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

In the absence of a tenancy agreement that corroborates the claim that the agreement requires the Tenant to have the carpet professionally cleaned at the end of the tenancy,

I cannot conclude that this was a term of the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the walls needed cleaning at the end of this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the testimony that the walls needed cleaning or that refutes the Tenant's testimony that the walls did not require additional cleaning. As the Landlord has failed to establish that the walls needed cleaning, I dismiss the claim for cleaning the walls.

There is nothing in the *Act* that prevents a Tenant from disposing of personal items in the garbage at any point in their tenancy. In the absence of evidence, such as photographs which clearly establish the Tenant left an excessive amount of garbage and/or furniture at the bins, I find that the Landlord is not entitled to compensation for removing the garbage.

I find that the Application for Dispute Resolution filed by the Tenant has merit and that the Tenant is therefore entitled to recover the fee for filing an Application.

I find that the Application for Dispute Resolution filed by the Landlord has been without merit and I dismiss the Landlord's claim to recover the fee for filing an Application.

### Conclusion

The Tenant has established a monetary claim of \$843.81, which is comprised of double the security deposit, \$13.81 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. As the Landlord has already returned \$323.63 of the deposit, I grant the Tenant a monetary Order in the amount of \$520.15. In the event that the Landlord does not voluntarily 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: August 30, 2013

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Residential Tenancy Branch

