



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The parties listed appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The landlord, in their application for dispute resolution, did not seek compensation for the alleged damages to the rental unit or for money owed or compensation for damage or loss; however it was clear from the landlord's application and documentary evidence that they were seeking such compensation. I therefore amended the landlord's application to include a request for compensation for the alleged damages to the rental unit or for money owed or compensation for damage or loss.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began October 1, 2011, monthly rent was \$1295, and the tenant paid a security deposit of \$647.50 on or about August 25, 2011.

The landlord said that the tenant vacated the rental unit on May 5, 2013, and the tenant said that he vacated the rental unit by May 1, 2013.

The landlord's monetary claim was \$1679.60, which in the details of the dispute portion of their application included unpaid rent for May 2013, cleaning for \$100, cleaning materials for \$20, painting walls for \$196, and painting materials for \$68.60.

The landlord's relevant documentary evidence included a faint copy of a tenancy agreement and condition inspection report, photos of the rental unit, and receipts for the items claimed.

The tenant agreed that the unpaid rent for May was owed to the landlord.

As to the balance of the monetary claim, the landlord's agent stated that due to the tenant smoking in the rental unit, it was necessary to repaint the walls.

The landlord's agent also submitted the rental unit was not clean and required cleaning.

*Tenant's response-*

The tenant submitted that he should not be charged for painting due to any smoking as the landlord was well informed that the tenant smoked in the rental unit and that smoking was allowed. The tenant further contended that smoking was never mentioned during the move-out inspection and that he wasn't told about the painting.

The tenant also submitted that he cleaned the rental unit, including the bathroom and toilets, and that he used the self-cleaning feature of the stove/oven.

The tenant's questioned the accuracy of the figures used by the landlord as she mentioned on the spot that painting was \$195 and supplies were \$68.,

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

*Unpaid rent for May* -As the tenant agreed to this charge, I award the landlord monetary compensation of \$1295 as requested.

*Cleaning*-Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In reviewing the photographic and written evidence of the landlord, while I do not find that the tenant left the rental unit in spotless condition for the succeeding tenant, I find upon a balance of probabilities that the tenant left the rental unit reasonably clean, less reasonable wear and tear, as was his obligation. I therefore dismiss the landlord's claim for cleaning and cleaning materials.

*Wall painting*-In considering this request of the landlord, I took into account that the tenant was allowed to smoke in his rental unit. I find it logical under these circumstances that any issues with a smoking odour in the rental unit were as a result of reasonable wear and tear by the tenant and therefore I do not find that the tenant has breached his requirement under the Act.

I therefore dismiss the landlord's request for wall painting and supplies.

I find that the landlord's application contained merit and I award them to recover the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$1345, comprised of unpaid rent of \$1295 and the filing fee of \$50.

### Conclusion

The landlords' application for monetary compensation is granted in part.

At the landlord's request, I direct them to retain the tenant's security deposit of \$647.50 in partial satisfaction of their monetary award of \$1345 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$697.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: August 12, 2013

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Residential Tenancy Branch

