



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### **Dispute Codes:**

MND; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent JK and the Tenant's agent GC gave affirmed testimony at the Hearing.

JK testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, on May 9, 2013, and copies of the Landlord's documentary evidence by registered mail sent July 30, 2013. The Landlord provided a copy of the receipts and tracking numbers in evidence.

The Tenant did not serve the Landlord with copies of his documentary evidence. The Tenant's agent stated that the Tenant did not realize that he had to serve the Landlord. Therefore, the Tenant's evidence was excluded.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for damages?
- May the Landlord apply the security deposit in partial satisfaction of her monetary award?

### **Background and Evidence**

This tenancy began on September 7, 2007, and ended on April 30, 2013. The Landlord purchased the rental property from the previous landlord in October, 2009. Monthly rent was \$1,500.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 on May 31, 2007.

A move in Condition Inspection Report was completed on September 1, 2007. The Landlord provided a copy of the Report in evidence.

A move out Condition Inspection Report was completed on April 30, 2013, a copy of which was provided in evidence. The Tenant was present at the move out inspection and signed the section of the report indicating that he agreed that the report fairly represented the condition of the rental unit; however, he did not authorize the Landlord to deduct any amount from the security deposit. The Tenant provided his forwarding address in writing on April 30, 2013. The Landlord filed its Application for Dispute Resolution on May 9, 2013.

JK gave the following testimony:

JK testified that the Landlord's agent BG was with the Tenant to do the Condition Inspection on April 30, 2013. She testified that BG called her to come to the rental unit because he was concerned about obscene and suicidal messages on the walls and bi-fold doors, which were written in permanent marker. The messages were written by the Tenant's elder daughter. In addition, the Tenant's younger daughter had scribbled on the walls. Overall, the walls were very badly marked up. JK stated that she was so concerned about the nature of the messages that she called the Ministry to investigate

JK testified that the stove was scratched and burned; the kitchen counter and floor had burn marks; and the carpets were dirty and stained. She stated that grease had coated the wires in the hood fan and rendered the fan inoperable. JK testified the living room and dining room carpets had to be replaced, but the Landlord is not seeking to recover that cost. The Landlord is seeking to recover the cost of the stain removal and cleaning of the carpets in the two bedrooms only.

JK stated that it took 3 or more coats of paint to cover some of the permanent marks on the walls and the bi-fold doors, but the Landlord is seeking compensation for the prep work and labour only, not for the cost of the paint. JK testified that the bi-fold doors were an irregular size and that it was less expensive to paint them numerous times to cover the permanent marks, than to replace them with new doors.

JK testified that the stove, carpet, kitchen lino and counter were all new in 2006.

The Landlord provided copies of invoices and photographs in evidence. The Landlord seeks a monetary award, calculated as follows:

Cost of repairing and painting walls (labour only)	\$1,520.00
Cost of repairing and painting bi-fold doors	\$225.66
Replacing stove	\$400.00
Replacing hood fan	\$80.00
Replacing kitchen counter	\$430.00
Replacing kitchen floor	\$441.49

Cleaning carpets	\$175.00
Removing carpet stains	\$400.00
Cleaning drapes	<u>\$168.00</u>
TOTAL CLAIM	\$3,840.15

GC gave the following testimony:

GC stated that the Tenant raised two children in the rental unit and that they were under a lot of stress because the daughters were bullied at school.

GC testified that the Tenant asked the Landlord's management company to recommend someone to clean the walls before he moved out, and that management recommended the Landlord's agent BG. GC testified that BG came to the rental unit in mid April and estimated that it would cost \$400.00 to clean the walls and stove and to do minor touch ups to the paint. GC testified that the Tenant gave BG \$400.00, but BG didn't do anything and therefore BG did not fulfill their contract.

GC did not dispute that the Tenant's daughters had marked the walls and bi-fold doors, but stated that he did not believe that it took 38 hours to paint the walls.

GC agreed that the carpets in the living room and dining room were stained, but stated that the Landlord replaced them with laminate. He disputed that the carpets were stained in the bedrooms.

GC testified that the hood fan was not damaged and that any stains were normal wear and tear. He submitted that all of the Landlord's claims were for normal wear and tear, with the exception of the walls.

GC stated that it should not have cost \$175.00 to clean the bedroom carpets and \$168.00 to clean the drapes. GC stated that the drapes were replaced with blinds.

He stated that the Landlord was trying to charge the Tenant for the cost of renovations that were not the Tenant's responsibility. GC stated that the photographs of the kitchen counter indicate that it was dirty, but not burned.

JK gave the following reply:

JK stated that the Tenant did not clean the windows, bathroom or kitchen and that BG cleaned the rental unit prior to the Condition Inspection taking place. She stated that the Tenant was not charged for cleaning fees because he had already paid BG for cleaning.

She stated that the Landlord tried to save all of the carpets, but could not save the living and dining room carpets and decided to replace them with laminate. The Landlord has not charged for replacing the carpets.

JK testified that the extent of the damage to the walls was not apparent until the Tenant had removed all of the furniture. JK stated that BG does not paint rental units, and that the painting is contracted out. She stated that in order to cover the permanent marker stains on the walls, multiple coats of paint had to be used.

JK referred to the photographs provided in evidence.

### **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different 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 Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the Act provides that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. Based on the testimony and documentary evidence provided, including the Condition Inspection Reports, photographs and invoices, I find that the Landlord has provided sufficient evidence that the Tenant did not comply with Section 37(2) of the Act. I do not accept GC's submission that the damages described and depicted were normal wear and tear.

I find that the Landlord provided sufficient evidence to substantiate the amount required to repair the damage. However, I find that some of the Landlord's claims must be adjusted to include depreciation of materials. Residential Tenancy Policy Guideline 40 provides the useful life of building elements. This is a guideline only, but is useful when

calculating the remaining life of materials if not subjected to abuse or damage other than normal wear and tear.

Indoor paint has a useful life of 4 years and therefore the rental unit was due to be painted at the end of the tenancy. However, the Tenant's daughter used permanent markers on the walls and bi-fold door. I accept the Landlord's evidence that multiple coats were required to cover the marks. Therefore, I allow the Landlord's claim for the cost of painting the walls and bi-fold doors at 75%:

$$(\$1,520.00 + \$225.66) \times 75\% = \mathbf{\$1,309.25}$$

A stove has a useful life of 15 years. Therefore, I allow the Landlord's claim for the cost of replacing the damaged stove and hood fan as follows:

$$(\$400.00 \times 6) + (\$80 \times 6) / 15 = \$192.00$$

$$\$480.00 - \$192.00 = \mathbf{\$288.00}$$

Kitchen counters have a useful life of 25 years. There is no recommended useful life for linoleum, but tile has a useful life of 10 years and hardwood 20. Therefore, for the purposes of calculating depreciated value, I have allotted a useful life of 15 years for linoleum. I find that the Landlord is entitled to the following amounts for the damage to the counter and linoleum:

$$\text{Counter } (\$430.00 \times 6) / 25 = \$103.20$$

$$\$430.00 - \$103.20 = \mathbf{\$326.80}$$

$$\text{Linoleum } (\$441.49 \times 6) / 15 = \$176.60$$

$$\$441.49 - \$176.60 = \mathbf{\$264.89}$$

The Tenant's agent testified that the Landlords replaced the drapes with blinds. The Landlord did not dispute this. Therefore, the Landlord's claim for the cost of cleaning the blinds is dismissed.

Tenants are required to clean carpets at the end of a tenancy that exceeds 12 months. Therefore, I allow the remainder of the Landlord's claim, as follows:

Removing carpet stains	\$400.00
Cleaning carpets	<u>\$175.00</u>
Total	<b>\$575.00</b>

The Landlord's total monetary award for damages is calculated as follows:

Painting	\$1,309.25
Replacing stove and hood fan	\$288.00
Replacing counter	\$326.80
Replacing linoleum	\$264.89
Removing carpet stains	\$400.00
Cleaning carpets	<u>\$175.00</u>
<b>TOTAL</b>	<b>\$2,763.94</b>

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the \$750.00 security deposit and accrued interest towards partial satisfaction of her monetary award. Interest in the amount of \$17.98 has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Monetary award	\$2,763.94
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,813.94
Less security deposit and accrued interest	<u>- \$767.98</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$2,045.96</b>

### **Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$2,045.96** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 23, 2013

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Residential Tenancy Branch