



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; FF

### **Introduction**

This is the Landlords' application for compensation for damage or loss; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, on May 10, 2013. She stated that she also sent copies of her documentary evidence to the Tenant by express post. The Tenant acknowledged service of the documents.

The Tenant testified that she served the Landlords with copies of her documentary evidence on July 25, 2013, by handing the documents to the Landlords with a witness present. The Landlord acknowledged receipt of the Tenant's documents.

### **Issues to be Decided**

- Are the Landlords entitled to a monetary award for the cost of cleaning the rental unit, replacing a door, and unpaid utilities?
- If so, may the Landlords deduct their monetary award from the security deposit?

### **Background and Evidence**

The rental unit is a suite above the Landlords' garage. This tenancy began on September 30, 2012, and ended on April 30, 2013. Monthly rent was \$800.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 on August 11, 2012.

On February 24, 2012, the Landlords received the Tenant's notice to end tenancy in writing, effective April 30, 2013. The Tenant stated that she moved out of the rental unit

on April 14, 2013, but returned on April 18, 2013, to pick up bottles, put garbage in the bins and to take photos. The photographs were provided in evidence.

There was no Condition Inspection Report completed that complies with the requirements of the regulation, at the beginning or the end of the tenancy.

The Landlord testified that the Tenant damaged the door at the rental unit. The Landlord seeks a monetary award for the cost of replacing the damaged door. The Landlord provided a quote dated July 19, 2013, in the amount of **\$470.40** for replacing the door. The Landlord stated that the door was seven years old.

The Tenant testified that the door was stiff and warped when she moved in and that she told the male Landlord about it. She stated that the male Landlord told her he would fix it but he never did. Eventually the Tenant was unable to open the door, so she used a screw driver and took the handle off.

The Landlord stated that the Tenant left the heat turned on "high" when she moved out. She stated that the hydro bill was more than it should have been because the Tenant insisted on leaving the heat on high even though she wasn't there. The Landlord seeks an award of **\$5.60** for extra hydro.

The Landlord testified that the Tenant did not leave the rental unit in reasonably clean condition at the end of the tenancy. The Landlord stated that the Tenant left bags of garbage at the rental unit and that they were full of maggots and bugs. She stated that she hired two cleaners who took 4.5 hours to clean the rental unit. The Landlord provided a copy of the cleaner's receipt (4.5 hours @ \$50.00 per hour) in the amount of **\$225.00**. The Landlord also provided a copy of one of the cleaner's written statements in evidence.

The Tenant testified that garbage collection was included in the rent, but there was no regular garbage pick-up, so the Landlords would take it to the dump. She stated that the Landlord did not pick the garbage up for a 6 week period. The Tenant denied that there were bugs or maggots in the garbage. She stated that she didn't leave the garbage in the suite, but put garbage in the bins when she went back to the rental unit on April 18, 2013, and left it there for the Landlord to pick up.

The Tenant stated that the rental unit was basically clean when she left on April 14, 2013. She stated that she intended to come back and do a final clean on April 30, 2013, but when she got there, the Landlords had changed the locks and would not allow her to go into the rental unit to clean or to pick up the remainder of her belongings.

The Landlord acknowledged that they “took back possession” and stated that the tenancy ended at 1:00 p.m. The Landlord stated that the Tenant did not mention that there was anything wrong with the door when she moved into the rental unit.

### **Analysis**

This is the Landlords’ claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords 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, 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 Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords failed to provide sufficient evidence to support their claim for the following reasons:

- 1) Damaged door: Sections 23 and 35 of the Act require a landlord to complete a move-in and a move-out Condition Inspection Report. Part 3 of the regulation sets out when and how the inspection must take place and what standard information must be on the form. In dispute resolution proceedings, a condition inspection report completed in accordance with Part 3 of the regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection. The Tenant denies damaging the door. The Landlords did not comply with Sections 23 and 35 of the Act and therefore I find that they have not provided sufficient evidence that the door must be replaced or that the Tenant did the damage. I also note that the Landlords provided an estimate quote dated July 17, 2013, for the cost of a brand new door and that the door had not yet been replaced.
- 2) Increased hydro costs: Utilities were included in the rent and therefore I find that the Landlords have failed to prove this portion of their claim.
- 3) Cleaning charges: The Landlord is correct that tenancies end at 1:00 p.m. on the last day of the tenancy unless the tenancy agreement provides for a different time, or the parties agree to extend the time. The Tenant was there at the rental

unit on April 30, 2013, to complete her cleaning but the Landlord refused to allow her to do so, or the pick up her last few remaining possessions. The photographs provided by the Tenant indicate that the rental unit was basically tidy but may have needed a few hours of cleaning to bring it to the “reasonably clean” standard required by Section 37 of the Act. I find that the Landlords failed to mitigate their losses by disallowing the Tenant to do the work and therefore the Landlords are not entitled to their claim in the amount of \$225.00. However, I also find that the Tenant returned to clean the rental unit, which needed some cleaning, and therefore I allow a nominal amount of **\$100.00** for this portion of the Landlords’ claim.

The Landlords have only been partially successful in their claim and therefore I find that they are entitled to recover only a portion of the filing fee in the amount of **\$10.00** from the Tenant.

The Landlords have extinguished their right to claim against the security deposit under the provisions of Sections 24 and 36 of the Act. However, pursuant to the provisions of Section 72 of the Act, I order that the Landlords may set off their monetary award in the amount of **\$110.00** against the security deposit. I order the Landlords to return the remainder of the security deposit, in the amount of **\$290.00** to the Tenant forthwith.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$290.00** for service upon the Landlords, representing return of the balance of the security deposit after setting off the Landlords’ monetary award. 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 12, 2013

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Residential Tenancy Branch