



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      FF, OPC, MNDC, OLC, RP, CNC, RR

### Introduction

This review hearing dealt with cross applications. The parties have had several hearings regarding their issues. This matter was before me on March 18, 2013 and April 24, 2013. The landlord was successful in obtaining a monetary order. The tenants have since filed for review and were successful in having the original decision and order suspended pending the outcome of this hearing. As of today's hearing the landlord is seeking a monetary order for unpaid rent and cleaning and repair costs. The tenants are seeking a monetary order for compensation for having to deal with this ongoing matter. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to a monetary order?

### Background and Evidence and Analysis

The tenancy began on or about July 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2012 and then continued on a month to month basis. Rent in the amount of \$1043.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00. The landlord states that a pet deposit of \$250.00 was promised but was never paid by the tenants. The tenant provided a document that clearly shows the deposit was posted. I find that the tenants posted the \$250.00 pet deposit.

The landlord stated that a move in and move out condition inspection report was conducted. The tenant was present for the move in but not the move out. The landlord stated that he had given the tenant two opportunities to attend the move out inspection in writing. The tenants denied they were ever afforded this opportunity. The landlords' wife gave testimony that she was present when her husband personally served the female tenant with the "Notice of Final Opportunity to Schedule a Condition Inspection". Based on the above I am satisfied that the tenants were served the notice of the final inspection dates and that the Condition Inspection Report can be referred to and relied on in conjunction with the landlords' testimony and documentary evidence.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As both parties have applied for a monetary order I will address each of their claims and my findings as follows:

**Landlords First Claim-** The landlord is seeking \$1043.00 in unpaid rent and \$101.00 in late fees. The tenants dispute this claim. The tenants stated that they had a verbal agreement with the landlord to move out by mid January 2013 and that they would relinquish their security deposit. The landlord denies such an agreement existed. In the absence of any supporting documents and on the balance of probabilities I find that the landlord is entitled to \$1144.00.

**Landlords Second Claim –** The landlord is seeking \$400.00 for malicious damage to his unit. The landlord stated that he found an empty bottle of wax in the drain of his sink. He also stated that the breakers were turned off in the unit making it very cold. The

landlord surmised that the tenant was hoping to have the pipes freeze up with the wax and cause damage. The tenant's adamantly disputed this claim. The landlord has not provided sufficient evidence to prove this claim and I therefore dismiss this portion of the landlords' application.

**Landlords Third Claim** - The landlord is seeking \$37.47 to replace the kitchen blind. The landlord provided a receipt for \$7.47 for the blind and is seeking \$30.00 for driving to the store to pick it up and install it. The tenants dispute this claim. The tenants stated the blind was of a poor quality and that it wore out from use. I am satisfied that the landlord is entitled to the replacement of the blind in the amount of \$7.47.

**Landlords Fourth Claim** – The landlord is seeking \$50.83 for the replacement of a screen door. The tenants' acknowledge that they had accidentally damaged it but adamantly dispute the amount to replace it. The tenants stated that it needed to be re-splined into the frame as it was undamaged otherwise. I find that the tenants were responsible for the replacement of this item. The tenants did not take any steps to rectify the situation; I find the landlord is entitled to \$50.83.

**Landlords Fifth Claim-** The landlord is seeking \$85.57 to replace the toilet tank lid. The tenants initially acknowledged that they were responsible for the damaged lid but felt the amount sought was too high. The tenants stated that they had agreed to half the amount sought as that is what was submitted to them originally. I agree with the tenants that the landlord should be entitled to a reduced amount as the toilet was already 15 years old. I find that the landlord is entitled to \$42.79.

**Landlords Sixth Claim** – The landlord is seeking \$95.20 for carpet cleaning and provided a receipt. The tenants dispute the landlords claim stating that they left the unit very clean. I am satisfied that the landlord has provided sufficient evidence to support his claim and find that he is entitled to \$95.20.

**Landlords Eighth Claim** – The landlord is seeking \$46.32 for an aerator the landlord alleges the tenant took. The tenants adamantly deny this claim. The landlord was unable to provide sufficient evidence that the tenants took the aerator. I dismiss this portion of the landlords' application.

**Landlords Ninth Claim** – The landlord is seeking \$111.72 to replace the locks and cut new keys. The landlord stated the tenant returned only one key of the two keys issued. The tenants dispute the landlords claim. The tenants feel the landlord could have purchased a new dead bolt for "about fifteen dollars" and replaced the entire lock instead of just rekeying the locks. I do not agree with the tenant and her estimate of replacing the lock. The landlord provided a receipt to support his claim and I find that the landlord is entitled to \$111.72.

**Landlords Tenth Claim** – The landlord is seeking \$162.33 for supplies and labour to clean the suite. The landlords wife conducted the work at a rate of \$13.00 per hour X 12 hours = \$156.00 plus \$6.33 in supplies. The landlords provided a receipt, photos and the condition inspection report to support their claim. The tenants adamantly disputed this claim. The female tenant stated that she was immaculately clean and that the unit was clean. The tenant challenged the limited use of cleaning products and the amount of time required to clean. I accept the evidence of the landlords and find that they are entitled to \$162.33.

**Landlords Eleventh Claim** – The landlord is seeking \$600.00 for "Karen cried Wolf" re: fridge. The landlord stated that the tenant had called the landlord as she had discovered some black stains under the fridge. The landlord attended at the local department store to inquire further. He was advised that it was very unlikely that any oil or other liquids would leak from the fridge as it is a sealed component. The landlord alleges that the tenant placed "black sauce" under the fridge to encourage him to buy a new fridge. The tenants dispute the landlords claim. The tenant stated that she did in fact find black liquid under the fridge and wasn't about to leave it there. The tenant cleaned up the mess and threw the dirty rag out. I am not satisfied that the landlord has provided

sufficient evidence to support this claim and I therefore dismiss this portion of his application.

I will deal with tenants' application and my finding as follows:

**Tenants Claim** – The tenants are seeking \$500.00 for all the stress they had to endure regarding this matter. The tenants stated that the landlord was a difficult person to deal with and that he has made many false claims and allegations. The landlord made the same comments and statements about the tenants and felt they were prolonging this matter unnecessarily.

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.

The tenants have not provided sufficient evidence to support their claim, specifically on the grounds #1 and # 2. Based on the above and on the balance of probabilities I dismiss the tenants' application in its entirety.

As I have made new findings in regards to the monetary order, the original monetary order issued in the May 7, 2013 decision is to be replaced by a new order.

As for the monetary order, I find that the landlord has established a claim for \$1614.34. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord

retain the \$500.00 security deposit and the \$250.00 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$914.34. 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 \$914.34.

The tenant's application is dismissed in its entirety.

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