



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for alleged damage to the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain a portion of the security deposit in satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants?

### Background and Evidence

The parties agreed that the tenancy started in May of 2002, and that the property had been sold to the current Landlords after this time.

The Landlord testified he was unsure of how much of a security deposit he was holding. The Tenants testified that at the start of the tenancy they were paying \$1,250.00 in rent per month and they submit the security deposit they paid in May of 2002 was \$625.00.

The Tenants vacated the rental unit at the end of April 2013.

The Landlords are claiming that the Tenants failed to make a repair to the ceiling in the bedroom of the rental unit. The Landlords submit that the Tenants were storing items in

the attic at the rental unit and must have stepped on the ceiling and caused the crack. In evidence the Landlords provided a photograph of the crack in the ceiling.

The Landlords are also claiming the Tenants failed to clean one of the windows in the rental unit. In evidence the Landlords have provided a photograph of a window depicting mold in the corners of the window frame and stains around the window. The Landlord testified it took him and his wife four hours to clean the window.

The Landlords are claiming \$250.00 for repairs to the ceiling and \$50.00 for cleaning the window.

In reply, the Tenants deny causing the crack in the ceiling. The Tenants testified that the storage area in the attic has plank flooring and walls, and physically this area does not extend into the bedroom over the cracked area. The Tenants allege that the crack is just a crack in the ceiling plaster of an older rental property. They testified that the crack has been there for some time, and was there at the start of the tenancy.

The male Tenant testified that he was the person going into the attic and alleges that had he stepped on the ceiling he likely would have gone right through it and caused a hole rather than a small crack, due to his weight. He testified he had not walked over the cracked area in the attic as it was beyond the storage area in the attic.

As to the window, the Tenants testified they did the best they could when cleaning the window. They used bleach and had help in cleaning in the rental unit. The female Tenant suggested the only way to clean the interior frame of the window was with a toothbrush.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find the Landlords have insufficient evidence to prove the Tenants caused the crack in the ceiling. The photograph submitted shows a hair line type of crack in the plaster. I was persuaded by the evidence of the Tenants that if the male Tenant had stepped on the ceiling it likely would have caused a much larger crack or more likely a hole. I find it is also just as likely that the crack was due to the settling of the house over the years.

In any event, the Landlords had no evidence that the crack was not there at the start of the tenancy and based on all of the above, I find they have failed to prove the Tenants caused the crack, and I must dismiss this portion of the claim.

I do find the Tenants did not clean the window sufficiently. Under section 37 of the *Act* the Tenants were required to leave the rental unit reasonably clean, and I find the evidence shows they did not clean the window to a reasonable standard. There is mold that could have been removed, as well as streaks under the window frame. I find the Tenants breached section 37 of the *Act* by failing to clean the window reasonably.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the testimony, evidence, photographs and a balance of probabilities, I award the Landlords \$50.00 for the cleaning of the window.

As the Landlords have only been partially successful in their claims, I allow them \$25.00 of the \$50.00 filing fee for the Application.

Therefore, I find that the Landlords have established a total monetary claim of **\$75.00** comprised of the above described amounts.

I order that the Landlords retain \$75.00 from the deposit and interest in full satisfaction of the claim and I order the Landlords under section 67 to return the balance due to the Tenants within 15 days of receiving this Decision.

In calculating the balance payable to the Tenants the Landlords must add the interest payable under the Act to the deposit and then deduct the \$75.00 award, and then return the total balance remaining to the Tenants.

Interest is based on a statutory rate set out in the regulations to the Act. Interest is payable from the start of the tenancy up to 2009, when the interest rate was set at zero (0%) and remains there to the present.

To accurately calculate the interest due, the Landlords should use the Interest Calculator tool at the Residential Tenancy Branch Internet website located at: [www.rto.gov.bc.ca/content/calculator/calculator.aspx](http://www.rto.gov.bc.ca/content/calculator/calculator.aspx)

I caution the Landlords that failure to return the total balance due within 15 days of receiving this Decision *may* result in the Tenants making an Application for double the security deposit to be returned.

### Conclusion

The Landlords have been partially successful in their claims.

They may retain **\$75.00** from the security deposit and interest held, and must return the balance of the deposit and interest due to the Tenants within 15 days of receipt of this Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 01, 2013

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Residential Tenancy Branch

