



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      NMD, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenants, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The hearing had been adjourned on two occasions and was reconvened and completed today. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep the pet deposit?

### Background and Evidence

The parties agree that this tenancy started on March 01, 2012 for a fixed term ending on January 31, 2013. This fixed term was extended on January 31, 2013 to June 30, 2013. A mutual agreement was signed by the parties on February 05, 2013 to end the tenancy on March 15, 2013. Rent for this unit was \$1,800.00 per month and was due on the 1<sup>st</sup> day of each month. The tenants agreed in writing that the landlord could keep their security deposit of \$900.00. The tenants paid a pet deposit of \$900.00. Both parties attended a move in and a move out inspection of the property and the tenants provided a forwarding address in writing on March 08, 2013.

### **Unpaid rent**

The landlord testifies that they agreed the tenants could move out on March 05, 2013. However the tenants but did not pay rent for the four days they occupied the unit in March. The landlord seeks \$232.00 in unpaid rent.

The tenant (MM) disputes the landlord claim. The tenant testifies that when they signed the mutual agreement to end the tenancy the landlord wanted the tenants to leave by March 01, 2013. The tenant testifies that he could not move out by then. The tenant testifies that in fact they had managed to move out by that date but had to return to the unit to clean it. The landlord did not lose any rent as the landlord had stated that the house was not fit for a tenancy and said the house was a bio-hazard and was later sold. The tenant had already agreed the landlord could keep the security deposit of \$900.00 for any minor cleaning or repair issues and for rent. The tenant testifies that after speaking to the landlord, tensions became high so they moved out as quickly as possible.

The landlord's agent testifies that the day they signed the mutual agreement was before they knew that the house was deemed to be a bio-hazard. The tenants had agreed to be out of the unit by March 15 but when the tenants said they could be out by March 05 then the landlord agreed that they only had to pay rent for four days in March.

The tenant testifies that the landlord has not proven that the house was a bio-hazard. The tenant testifies that his son had had a party at the house without the tenants' permission while the tenants were away for a weekend. The tenant had a company come in to clean the carpets and they did not deem the house to be a bio-hazard.

The landlord testifies that a professional restoration company deemed the house to be a bio-hazard and the house could not be re-rented until it was made livable again. The landlord agrees that later the house was sold.

### **Damages**

The landlord testifies that due to the tenants unauthorised party held at the house extensive damage was done to the property while the property was under the care and control of the tenants. The landlord testifies that he did most of the minor repairs himself, a restoration company did some work, a carpet company laid new carpets, and someone was paid to do some cleaning work.

The landlord has provided a list of the work he did himself and has provided receipts for this work with a time charged for the landlords labour. The total amount claimed for items purchased to do repair work is \$593.13. The landlord's labour costs are charged to the tenant at the landlord's hourly rate received from work. The landlord earns \$61.38 an hour and evidence has been provided of this. The landlord seeks \$1,227.60 for 20 hours of the landlords work.

The landlord testifies that he had to replace both exterior garage lights as one was broken but a match for the original could not be found so both lights had to be replaced; there was a broken patio door handle; a repair to the patio door lower lock; the dining room chandelier had to be replaced; a broken acrylic sheet for the light was replaced; the pantry cupboard was repaired; a broken switch cover replaced; The hall closet door repaired; a switch and switch cover in a bathroom replaced; the master bedroom closet door repaired; the master bedroom window blind had a bent slat and was replaced and

this blind was only two years old; the master bedroom window casing was repaired; two acrylic light covers in the family room were replaced; a towel rail in the downstairs bathroom was repaired; the shelving in the downstairs bathroom was repaired; many light bulbs were burnt out and replaced. The restoration company did their work pro-bono to remove the carpets in the house however the landlord had to seal the wooden flooring under the carpeted areas and had to purchase sealer, materials, rollers trays and poles to do this work.

The landlord testifies that most things that required repair or replacement were new in 1992.

The landlord testifies that that the floors had to be sealed before new carpeting could go down due to the bio-hazard; as during the party someone had defecated and urinated on the floor and as there was over 200 people at the party this could have been tracked through the rest of the home. As this unauthorised party also made national news it put off prospective buyers of the home until the landlords could obtain a letter stating the home was made safe and no bio-hazard existed.

The landlord testifies that a locksmith had to come in rekey the locks as the landlord wanted to ensure the home was secure due to the party and not knowing who had access to the home. The landlord testifies that in addition to this the tenants only returned one of three keys. The landlord seeks to recover the cost for the locksmith and has provided an invoice in evidence for \$148.64. The landlord's agent corrected this statement and testifies that in fact the tenant later returned a second key to the landlord's agent.

The landlord testifies that he lives out of Province and although he has a property management company dealing with the tenancy; due to the party that made national news the landlord had to return to BC to check on the property. The landlord therefore seeks to recover his travel costs of \$1,651.63 which also includes meals. The landlord has provided evidence of this travel. The landlord also seeks to recover lost time at

work for 18 days he was away from work dealing with these issues. The landlord has provided evidence of his earnings and seeks to recover \$8,838.72 from the tenant.

The landlord testifies that the carpets had to be replaced throughout the property and the landlord seeks to recover \$10,009.62 for the new carpets. The landlord testifies that the carpets were the original carpets in the house which were new in 1992.

The landlord testifies that they also had to do some additional cleaning in the property. This actually came to \$120.00 however the landlord seeks now to claim only \$48.66. An invoice has been provided in evidence.

The landlord seeks an Order to keep the pet deposit only as the tenant has already agreed in writing that the landlord may keep the security deposit. The landlord seeks a Monetary Order for the balance and seeks to recover the \$100.00 filing fee.

The tenant disputes the landlords claim. The tenant testifies that the broken door handle in the family room was already broken as a plastic cover was missing which made the door hard to close. This was documented on the move in inspection report.

The tenant testifies that the broken garage light is not mentioned on the move out inspection report and the garage lights were 21 years old and were both corroded and had passed their useful life.

The tenant testifies that the acrylic light cover in the kitchen was cracked at move in and during the tenancy this piece broke and fell out. The cabinetry was old and not in good repair and the move in report mention that the cabinets are cracked and suffered from wear and tear. The broken cabinet is not mentioned on the move out report.

The tenant testifies that the closet doors were also old and had always been sticky The tracks were 21 years old and the landlord must expect some wear and tear on closet doors that are this old. This damage is also not mentioned on the move out report. The

tenant agrees that the closet door in the master bedroom did get moved from its tracks but that this door was replaced by the tenants and was also 21 years old.

The tenant testifies that he had the carpets professional cleaned after the unauthorised party. The tenant has provided evidence of the type of cleaning that took place and that this was donated by the carpet cleaning company who wanted to help the tenants after news of the party was publicised.

The tenant testifies that the blind in the master bedroom only had one bent vine as shown by the tenant's photos and the window and mouldings were repaired after one of the party goes throw a TV through the window. Any damage to the blinds is no more than normal wear and tear. The tenant testifies that there is no mention of any damage to the window casing on the move out report.

The tenant testifies that the acrylic light cover in the family room was cracked when the tenants moved in and this is also documented on the move in condition inspection report and the move out report states that it is in the same condition.

The tenant agrees that the towel rail was pulled from the wall but disagrees with the landlord's labour costs to replace this as the landlord could have mitigated the loss by using local labour to do this work.

The tenant testifies that the move in report identifies paint chips on the shelving in the downstairs bathroom and the move out report does not identify that the shelving is broken. The tenant testifies that the shelving was 21 years old and of poor quality.

The tenant refers to the landlord photographs showing the family room without the carpets. The tenant testifies that the landlord's photos show some dark marks on the flooring. The tenant testifies that this floor is the main walk through to the uncovered outside area and the carpets were 21 years old. The landlord must expect some discolouration on the floor particularly as this property was owned by a taxidermist, was

then a bed and breakfast and has been rented out to other tenants. So with 21 years of people walking through this area the landlord might expect some discolouration to the subfloor. The tenant testifies that the landlord's evidence is inaccurate concerning the party goers defecating or urinating on the floor. The party goers actually filled the bathtub with the tenant's children's toys and peed all over these toys. There was no defecation or urination on the family room carpet. The tenant testifies that the useful life of a carpet is described as 10 years and so the landlord has to expect to replace a carpet of 21 years.

The tenant testifies that at the start of the tenancy some areas of the carpets were torn and worn with signs of wear and tear. The tenant has provided photographic evidence of these areas. The landlord had said at that time that the carpets would be replaced if the landlords sold the home. The tenant testifies that the landlord has provided no evidence to show that the home was a bio-hazard or that the tenants could not live in the home.

The tenant refers to their photographic evidence that was taken after the tenants had cleaned the carpets and the property and made any repairs caused by the party goers. The tenant testifies that their photos show that the house is clean, repaired and that the carpets are clean. The tenant refers to the landlord's photographic evidence and states that 85 percent of the landlord's pictures show the house after the party and not at the end of the tenancy. The tenant agrees that there were some minor things to do in the home such as missing light bulbs and the broken chandler but that is why they agreed the landlord could keep the security deposit of \$900.00.

The tenant testifies that the landlord did not need to replace the locks. The tenants handed back two keys and it should be a landlords normal practise to change locks between tenancies as a landlord can never be sure that any tenant has returned all the keys and has not made copies.

The tenant disputes the landlords claim for travel and meal costs, for lost wages and the landlord's labour costs. The tenant testifies that it is clearly stated in other decisions made by the Residential Tenancy Office that there is no provision under the *Residential Tenancy Act* for a landlord to claim travel costs. The tenant testifies that when he entered into this tenancy agreement it was with the landlord's management company who are a local company and the tenant did not enter into a contract with an absent landlord. If the landlord had hired a company to look after the tenancy and property then he had paid this company to deal with these issues. The landlord could have also used local labour to do any necessary repair works who do not charge \$61.38 an hour. The tenant testifies that had the tenancy continued the tenant had volunteers from companies in the community who offered to do any repair work after the party made the news.

The tenant testifies that all sections of the landlords claim for damages are all items that are beyond their useful life span.

The tenant testifies that they did clean the property at the end of the tenancy. The tenant agrees that some shelves may have been left a little dusty and the downstairs toilet may not have been cleaned. The tenant testifies that the oven was not cleaned as the door would not stay closed and the landlord had said he was going to replace the oven. The fridge had been emptied of food but was not wiped out as it was old and the landlord was going to replace the fridge. The tenant testifies that these small things all should have come out of the tenant's \$900.00 security deposit. The tenant agrees that they could not clean up all of the dog feces in the back yard as at the time of moving out there was snow on the ground and some feces could have lain under the snow and was not visible to the tenant.

The landlord cross examines the tenant and asks the tenant if the tenant had opportunity to read the evidence provided by Service Master. The tenant responds that he did. The landlord asks if the tenant is saying that the letter written by Service Master was inaccurate. The tenant responds that this letter contradicts the tenant's evidence



from the tenant's contractor. The landlord asks if the tenant agrees that there was a lot of garbage piled up. The tenant responds that the garbage cans were filled and then there were some extra bags to go out the next day as it was garbage day the day after the tenants moved out. The landlord asks if the tenant agrees that the media interviews were accurate. The tenant responds that no the media did not report what happened accurately and over dramatized it. The landlord asks if the tenant signed an agreement in which the tenant agreed to look after the landlord's home and be responsible for damages. The tenant responds yes. The landlord asks if the tenant agrees there was a party at the house which caused damage outside normal use. The tenant responds yes. The landlord asks do you agree that the landlord had a right to investigate what happened at the house that received national attention. The tenant responds yes a landlord has a right to check on his property. The landlord asks if the tenant has provided a carpet cleaning receipt. The tenant responds that he has provided everything from the carpet cleaning company who did the work and this also shows that they volunteered their services for free and ended up cleaning all the rooms. This evidence also shows that they considered the home cleaned for a families use and suitable for habitation. The landlord asks the tenant about the stains in the family room and is the tenant positive that the stains are in the normal walking traffic areas. The tenant responds that there have been 21 years of people using this room and this is an accumulation of moisture and traffic as the room leads to and from an uncovered outside area.

The tenant cross examines the landlord and ask the landlord what is your job. The landlord responds that this is not relevant. The tenant asks about the landlord's evidence showing the landlords earnings. The landlord responds that he is a journeyman electrician and carpenter. The tenant asks if an electrician or carpenter would make \$61.00 per hour in this area. The landlord responds that he does not know. The tenant asks why the landlord did not get contractors to do the work. The landlord responds that he could not get people there for the dates and the tenant did not tell the landlord that people had volunteered to do work until after the work was done. The tenant asks the landlord what work a handyman did and did the landlord pay the

handyman \$61.00 per hour. The landlord responds that the handyman did other work not on the claim and no he was not paid \$61.00 per hour.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application for unpaid rent, I find the tenant would be responsible for unpaid rent of \$232.00 as the tenant still had possession of the rental unit for the first four days in March. However the tenant agreed the landlord could keep the security deposit of \$900.00 to go towards the unpaid rent and other issues so I must deny the landlords claim to recover a further amount.

With regard to the landlords claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The parties agree that there was an unauthorized party at the house while the tenants were absent. As this party was held by the tenant's son then the tenants are responsible for any actions of the son or guests invited to the party. The tenant argues that the carpet was cleaned; the landlord argues that the carpet represented a bio-hazard and had to be replaced. I am not satisfied that this carpet that was 21 years old was damaged solely through the actions or neglect of the tenant or the party goers which was not rectified by the tenant. The documentary evidence shows that the carpet was old and worn in many places. Furthermore I refer the parties to the useful life guidelines under the Residential Tenancy Policy Guidelines and as submitted in the tenant's documentary evidence. This information refers to the useful life of items or the acceptable period of use under normal circumstances and states that the useful life of carpets is 10 years. As the carpets are 21 years old and suffered from wear and tear and the start of the tenancy I find the landlord cannot hold the tenants responsible for the replacement of these carpets. I further find the tenants had the carpets cleaned throughout the home and although the landlord has submitted a letter from a restoration company stating the carpets represent a bio-hazard there were no documented tests done on the carpets to determine that they were in fact a bio-hazard and required replacement. The landlords claim for replacing the carpets and work done on the subfloor is therefore dismissed.

The reminder of the landlords claim for damages is also questionable. The landlords move in inspection report indicate that the patio door handle has a plate missing, that there is some wear and tear on some cabinets and drawers, that there is cracked light cover in the main bathroom and that many areas of the unit are unclean. The Move out inspection report does not indicate that the garage lights were broken, that the chandelier was broken, the acrylic light covers are cracked or broken, and the towel rail was off the wall. The move out report does indicate a broken lock on the patio door, missing light bulbs, upper track and spring missing on the master bedroom closet and one bent blind

I further find that many items described as damaged by the landlord are also 21 years old and past their useful life span with the exception of the blinds which the landlord

states are two years old. The tenant argues that his photographic evidence shows the unit as it was left at the end of the tenancy. These photos depict that the unit has been left in a responsible condition. The tenant also argues that 85 percent of the landlord's photographic evidence was taken the day after the party took place and before the tenant had opportunity to make repairs and clean the carpets. The landlord agrees with this argument but holds with the argument that the tenant remained responsible for the property during the tenancy.

A landlord is not entitled to profit from any restoration work they do on a property and must take into consideration any depreciation of items in the home and consider the age of these items and the landlords desire to replace items that are beyond their useful life. I find as the tenant has agreed partially with some of the damage for example the chandelier and some cleaning required then the security deposit of \$900.00 is sufficient to pay for this items including the rent. Consequently the landlords claim for an additional Monetary Order is dismissed

I have considered the landlords claim for travel costs, meals and lost earnings. There is no provision under the *Residential Tenancy Act* for costs of this nature to be awarded. If the landlord is an absent landlord and the landlord has appointed an agent to work locally for the landlord concerning this tenancy then the landlord must bear the cost of their own travel and loss of earnings if they choice to come to the property to inspect it or carry out any repairs. His section of the landlords claim is dismissed.

With regards to the landlords claim for his labour costs of 20 hours; the tenant argues that the landlord earns a higher hourly rate then a local contractor and could have mitigated the loss by engaging the services of a local contractor. I agree with the tenants arguments in this matter. A landlord must attempt to mitigate any loss pursuant to s. 7 of the *Residential Tenancy Act*. I find the landlords costs charged for labour are far in excess of an hourly rate charged by a local tradesman. Furthermore as I have dismissed the landlord claim for repairs then I must also dismiss this section of the landlords claim.

With regard to the landlords claim to keep the pet deposit of \$900.00; as the tenant has agreed the landlord may keep the security despoil of \$900.00 to cover rent and cleaning and some minor repairs then I find that this is a sufficient amount and it would be unreasonable for the landlord to be granted any further Monetary Order. Consequently this section of the landlords claim is dismissed.

As the landlord has been unsuccessful with this claim the landlord must also bear the cost of filing their own application.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The landlord must return the tenants pet deposit of \$900.00. A Monetary Order has been issued to the tenant for this amount pursuant to s. 38(6)(b) of the *Act*. The order must be served on the landlord and is enforceable through the Provincial Court 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: September 20, 2013

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Residential Tenancy Branch

