



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 12, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee from the Tenant for this application.

Each party was represented by an Agent and hereinafter will be referred to as Landlord and Tenant. The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

### Background and Evidence

The parties confirmed the Tenant had occupied the rental property since towards the end of August 2012 on a verbal month to month tenancy agreement. Rent was payable on or before the first of each month in the amount of \$1,200.00 and on approximately August 21, 2012, the Tenant paid \$600.00 as the security deposit and \$500.00 as the pet deposit. No move in or move out condition inspection report forms were completed.

The Landlord testified that the Tenant was only allowed to have one dog as indicated on the pet deposit receipt. Once they found out the Tenant had two dogs and a cat they issued him a notice to end tenancy. The Tenant filed to dispute the notice and the Landlord saw the Tenant vacate the unit by the end of July 2013. No opportunities to conduct the inspection were served to the Tenant and when the Landlord entered the unit it was vacant and had some damage.

The Landlord is seeking to keep the pet deposit of \$500.00, the security deposit of \$600.00, plus claiming an additional \$348.00 for outstanding water bills and costs to repair the unit.

The Landlord pointed to their photos provided in evidence to show the damages which included: paint and gyproc damaged from walls when sticky hangers were removed; marks on the walls with crayon or pencil crayons; broken electrical outlets; damaged trim around doors from dogs scratching; laminate floor damaged by dogs urinating in small bedroom; and holes put into steel door when Tenant attached a new blind.

The Landlord testified that the Landlord would receive a water bill every two months and advise the Tenant how much to pay. The Tenant would go online and pay the bill and the Landlord would issue them a receipt. The last payment received for water utilities was issued to the Tenant on December 17, 2012. The Landlord is seeking \$606.00 for outstanding water bills. Copies of the outstanding bills were not provided in their evidence.

The Tenant's submission was provided by his Advocate who testified that the Tenant confirms there was one electrical outlet broken during the tenancy. The Tenant had paid to replace a blind prior to the end of the tenancy and denies causing the drawings on the walls. The Tenant does not have children and there were no children there to draw on the walls. The Tenant argues that the remaining damages were normal wear and tear. He noted that there was no condition inspection report form to prove the condition of the unit at the beginning of the tenancy.

The Tenant denies that their pets caused damage to the laminate flooring in the small bedroom or that they caused any damage above normal wear and tear. If the pets had an accident it was wiped up right away. They submitted evidence which supports the window in the small bedroom was leaking a large amount of water and therefore, they could not be held responsible for damage to the floor in that room.

The Tenant had confirmed to his advocate that they would pay water bills by on-line banking once the Landlord told them how much to pay. He noted that there was no evidence received to prove the actual outstanding amount due for water utilities.

In closing, the Landlord pointed to photos in their evidence which were taken prior to this tenancy and which show the condition of the unit at the start of the tenancy. These photos show the door, in the living room and hallway. She stated that she does remember that the Tenant complained about a window leaking in the unit during the tenancy and that the Landlord looked into the cause. She argued that there has been no water leaking in that unit since the Tenant moved out.

The Tenant's position was that there were no proper inspection reports and the photos do not show the specific areas or items that are being claimed. Furthermore, the Tenant has not been served a copy of the water bill.

### Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Landlord relies on photos provided taken from before the start of this tenancy as evidence to the condition of the unit at the beginning of the tenancy. The Tenant disputes the use of these photos as they do not clearly show the condition of all areas of the unit that are being claimed as being damaged.

The Landlord is seeking \$342.72 to replace the damaged laminate floor in the small bedroom as supported by the receipt provided in evidence. The Tenant disputed this claim and provided evidence of water leaking through the window in that room. The Landlord acknowledged there were complaints of water leak issues in that room but argued the water had not leaked since the Tenant moved out.

Based on the above, I find there is insufficient evidence to prove the Tenant breached the Act in a manner that caused damage to the laminate floor. Accordingly, the four criteria to claim damage has not been met, and I dismiss the claim for laminate flooring, without leave to reapply.

The Landlord did not submit evidence or receipts to support the costs being claimed for the remaining damages. Furthermore, in the absence of a condition inspection report form, and in the absence of clear photos to prove the condition of each area at the start of the tenancy, I find there is insufficient evidence to prove all these damages were caused during the tenancy.

Therefore, I find the Landlord has provided insufficient evidence to prove or verify the actual value of those damages being claimed. The Landlord failed to provide invoices or receipts for the work which was done, and furthermore, the Agent for the Landlord testified some of the work had not been performed. Based on the foregoing, and in the absence of a condition inspection report form, I find there to be insufficient evidence for the remaining damages claimed. Accordingly, the claim is dismissed, without leave to reapply.

The Landlord seeks \$606.00 for unpaid water utility bills. No utility bills were provided in their evidence; therefore, I find the Landlord has not proven the actual value of the claim

for utilities. Furthermore, the Tenant was not previously served a copy of the utility being claimed. Accordingly, the claim for water utilities is dismissed, without leave to reapply.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee.

As the Landlord's claim has been dismissed in its entirety, I hereby order the Landlord to return the Tenant's \$600.00 security deposit and \$500.00 pet deposit, plus interest of \$0.00, forthwith.

### Conclusion

The Tenant has been issue a Monetary Order in the amount of **\$1,100.00** (\$600.00 + \$500.00) for the return of his deposits. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: November 25, 2013

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Residential Tenancy Branch

