



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for alleged damage to the rental unit and for unpaid rent, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation and to recover the filing fee?

### Background and Evidence

I heard undisputed testimony from the landlord that this one year, fixed term tenancy began on October 1, 2012, was set to expire on September 30, 2013, that it actually ended on August 27, 2013, when the tenants vacated the rental unit, monthly rent was \$1800, and the tenants paid a security deposit of \$900 on October 2, 2012.

The landlord's monetary claim is for loss of rent revenue for September 2013, in the amount of \$1800, rubbish removal for \$115.50, carpet cleaning for \$198.45, cleaning for \$150, and bulb replacement for \$85.68.

The landlord's relevant documentary evidence included a tenant ledger sheet, a condition inspection form, a work order for light bulb replacement, an invoice for a light bulb replacement, an invoice for carpet cleaning, an invoice for rubbish removal, an invoice dated August 28, 2013, in the amount of \$150, mentioning a light bulb replacement, but no other specifics, with an unspecified payor, and a tenancy agreement.

The tenants agreed that they would be responsible for the rubbish removal.

*Loss of rent revenue, September 2013-*

The landlord submitted that they were entitled to loss of rent revenue for September as the tenants vacated the rental unit prior to the end of the fixed term, which ended on September 30, 2013.

The landlord agreed that they received the tenants' notice to vacate by August 31, 2013, on May 21, 2013.

In response to my question, the landlord testified that the rental unit was advertised on the company website, but agreed that she did not supply a copy of any advertisement and wasn't concerned about providing evidence because there was only a month of the fixed term remaining.

In response, the tenants said that they were very much aware of the fixed term, but contended they were informed by the landlord's representative that the three months notice was ample time to find another tenant for September 2013.

The tenants submitted that they received only one notice from the landlord's representative of a showing of the rental unit in the last three months of the tenancy and therefore questioned whether the landlord made any attempts to re-rent the rental unit for September.

*Carpet cleaning-*

The landlord contended that the carpet required cleaning after the tenants vacated, the cleaning for which the tenants were responsible.

The landlord showed the condition inspection report, which indicates the carpet was dirty at the move-out inspection.

In response, the tenants testified that when they were moving out, the landlord's inspector appeared and would not allow the tenants to provide carpet cleaning, as it was their intention to bring in their own carpet cleaner.

#### *Cleaning of the rental unit-*

The landlord submitted that the rental unit required cleaning after the tenants vacated, and pointed to the condition inspection report.

In response, the tenants testified that approximately a week prior to moving, they had cleaners clean the rental unit and that they stayed after the movers left to provide a final clean. The tenants submitted that they patched the walls and wiped out the cupboards, but admitted that they did not wipe out the veggie tray in the refrigerator.

The tenants contended that another landlord's agent agreed that the cleaners did a good job.

#### *Bulb replacement-*

The landlord contended that during the tenancy, the tenants requested a service call to the landlord to replace some burnt out bulbs, as the tenants could not reach these bulbs.

The landlord contended that the tenants were informed that there would be a charge for the landlord to provide labour to replace the bulbs, and that a standard minimum charge was \$47.50.

In response, the tenants submitted that they required assistance to replace the bulbs as the ceiling was so high, and they could not reach the fixtures.

The tenants contended that the landlord's representative said they would not be charged for the service call out and were never informed of the price.

I questioned the attending landlord as to other employees of the listed landlord, a property management company, as the tenants made reference to several other names representing the landlord. I received at least three other names, one working in maintenance, one working in leasing and one who was the primary contact for the tenants during the tenancy.

#### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

*Loss of rent revenue, September 2013-*

In the case before, the landlord failed to submit proof of the nature and frequency of the advertising or the monthly rent requested and therefore I was unable to examine the evidence to ensure that the landlord met their requirement to take reasonable measures to minimize their loss. Without such proof, I find the landlord submitted insufficient evidence of step 4 of their burden of proof.

I was also convinced from the landlord's testimony that the landlord believed that they were not required to advertise the rental unit, as there would have been just one month left on the fixed term, and I was thus convinced that the landlord failed to advertise the rental unit as required to minimize their loss.

As I find the landlord submitted insufficient evidence that they have met step 4 of their burden of proof, I dismiss their monetary claim for loss of rent revenue for September 2013, in the amount of \$1800.

*Carpet cleaning, cleaning of the rental unit-*

In making this claim, the landlord relied on the condition inspection report entered into evidence, rather than any other evidence, such as photographs, or direct testimony as the landlord's agent attending the hearing did not assert that she was present at the move-out inspection.

In reviewing the condition inspection report, I find the report to be deficient as neither the landlord nor the tenants signed the report at the move-out, as required by section 35(4) of the Act.

As the condition inspection report was deficient and as I have found that I could not rely on its authenticity due to such deficiency, and as I have found that the attending landlord's agent was not present at the move-out inspection, the tenants, who did attend the move-out inspection, therefore supplied undisputed evidence that the rental unit did not require cleaning.

I also accept the tenants' undisputed testimony that they attempted to provide a carpet cleaning, but were denied from so doing.

I therefore found that the landlord failed to supply sufficient proof of the condition of the rental unit at the end of the tenancy due to the deficient condition inspection report and lack of other evidence or direct testimony, or that the tenants failed to provide a carpet cleaning by their own choice, and I therefore dismiss the landlord's claim for carpet cleaning of \$198.45 and cleaning of the rental unit for \$150.

*Bulb replacement-*

I find the landlord submitted sufficient evidence that they sustained a cost for bulb replacement at the request of the tenants during the tenancy, that such bulb replacement was not the responsibility of the landlord and I therefore approve their monetary claim of \$85.68.

*Rubbish removal-*

As the tenants accepted responsibility for this cost, I approve the landlord's monetary claim of \$115.50.

As the landlord's application had some merit, I approve their request for the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$251.18, comprised of bulb replacement for \$85.68, rubbish removal for \$115.50 and the filing fee of \$50.

Conclusion

The landlord's application for monetary compensation is partially successful as I have granted them a monetary award of \$251.18.

At the landlord's request, I direct them to retain \$251.18 from the tenants' security deposit of \$900 in full satisfaction of their monetary award of that amount. I direct the landlord to return the balance of the tenants' security deposit of \$648.82, and I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$648.82, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondents.

Dated: December 30, 2013

---

Residential Tenancy Branch

