



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MND, FF  
For the tenant: MNSD, MNDC, FF

### Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenants' security deposit, a monetary order for alleged damage to the rental unit, and for recovery of the filing fee.

The tenants applied for a return of their security deposit, doubled, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

This hearing began on October 3, 2013, was attended by the landlord, his witness, and the tenants. Due to time constraints, the original hearing dealt only with the landlord's application, with the landlord supplying supporting oral evidence and the tenants providing a response to the landlord's application. The landlord's application had been fully dealt with. An Interim Decision was entered in this matter, dated October 11, 2013, and should be read in conjunction with this decision.

The parties were informed at the original hearing that the hearing would be adjourned in order to conduct a hearing and consider the tenants' application for dispute resolution.

At the reconvened hearing, only the tenants attended; neither the landlord nor any representative attended the reconvened hearing.

This reconvened hearing proceeded to consider the merits of the tenants' application for dispute resolution.

The landlord and his witness and the tenants at the original hearing and the tenants at the reconvened hearing 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.

*Preliminary issue*-I must note that during the original hearing, the landlord continually interrupted the hearing with his remarks and verbal gestures, such as sighing, during the tenants' testimony, despite repeated warnings, and made his contempt of the tenants quite clear.

*Preliminary matter*-I allowed the tenants to submit additional documentary evidence after the hearing, which was in the form of U-haul receipts for their move both from their home province prior to and after the tenancy, which they so did.

#### Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, compensation for alleged damage to the rental unit and to recover the filing fee?

Are the tenants entitled a return of their security deposit, further monetary compensation, and to recover the filing fee?

#### Background and Evidence

The evidence taken at the original hearing was that this tenancy began on August 1, 2011, according to the tenancy agreement, that the original monthly rent was \$890, was later increased to \$920, and that the tenants paid a security deposit of \$445, which has not been returned to them. The tenants contended that the monthly rent was increased to \$928.

The landlord, at the original hearing, stated that the tenants vacated on June 24, 2013, and the tenants stated that they vacated on June 15, 2013.

The landlord's relevant documentary evidence included:

- A written explanation of the issues

- A written notice dated May 31, 2013, from the tenants giving the landlord the date they were vacating the rental unit, or June 30, 2013, and a written forwarding address
- A written tenancy agreement
- A condition inspection report
- A letter to the tenants dated June 10, 2013, informing the tenants, among other things, that the tenants were required to leave the rental unit "(CRYSTAL) CLEAN, ODOUR FREE" as well as informing the tenants that if they have not vacated the rental unit by 1:00 p.m. on June 30, the tenants' security deposit would be "charged accordingly"
- A statement from a pest control company
- Written communication between the parties during the tenancy, for repair and bedbugs inspection issues
- 9 written notices from the landlord to the tenant, on consecutive days beginning June 16, 2013, giving the tenants notice of the landlord's intent to enter the rental unit anywhere between the hours of 10:00 a.m. until 9:00 p.m. on working days, and 11:00 a.m. until 9:00 p.m. on holidays and weekends "UNTIL the apartment has been RENTED" (I must note that the dates on the letters were handwritten and the rest of the letters were typewritten)
- A 2 page letter to the tenants dated June 4, 2013, informing the tenants that beginning on June 5 informing the tenants that the rental unit must be in "PERFECT CONDITION" when they left, and that the landlord would begin showing the rental unit on June 5
- An undated note or statement from a maintenance, cleaning and renovation company listing alleged charges for cleaning the rental unit, for a total of \$800
- A statement or invoice from a renovation company, dated June 27, 2013, listing repairs or replacement of items in the rental unit, for a total of \$1700

The tenants' relevant documentary evidence included:

- 22 photographs of the rental unit
- A copy of a police department card with incident number
- A photocopy of a condition inspection report
- A photocopy of a letter from the property manager posted on the tenants' door between June 4 and June 10, informing the tenants of entry to the rental unit for showings from 10:00 a.m. through 9:00 p.m. on working days and 11:00 a.m. to 9:00 p.m. on holidays and weekends (I must note that the dates on the letters were handwritten and the rest of the letters were typewritten)
- Copies of U-haul receipts

***Landlord's application-***

The monetary claim listed in the landlord's application is \$675.

In support of his application, the landlord testified that he is requesting \$675 from the tenants as they received a "perfect" apartment when they moved in, which was not left in the same condition with the tenants vacated, as noted on the condition inspection report.

In response to my question about the amount of his monetary claim listed in the application, the landlord stated that \$675 was an estimated amount as of the date of his application, for some cleaning and some repairs. I note that the landlord did not amend his application to seek an increased amount as a monetary claim.

The landlord claimed that the rental unit was newly renovated and had new hardwood floors.

The landlord stated that the parties conducted a move-in and move-out inspection and that the condition inspection report verifies the damage by the tenants.

***Tenants' response-***

The tenants denied conducting a move-in or move-out inspection with the landlord and denied signing the condition inspection report. The tenants submitted that the only copy of the condition inspection report they have received was the one they supplied into evidence, which is unsigned, and that the first time they saw the landlord's copy of a condition inspection report supplied was when they received his evidence.

The tenants submitted that they did not move into the rental unit until August 21, 2011, and that when they arrived, they found a blank condition inspection report. The tenants submitted that they attempted, with no luck, to arrange an inspection with the landlord. The tenants contended that, as to the landlord's copy of the condition inspection report, which shows a move-in inspection of August 1, 2011, this could not be the case due to their actual move-in of August 21, 2011. The tenants submitted a copy of their U-haul invoice for their move from another province, with a date for checking out the vehicle of August 18, 2011.

The tenant AH stated that she does not know how the landlord managed to secure her signature on his copy of the condition inspection report, as she would not sign a

document which noted that the rental unit was in perfect condition. The tenant theorized that on the move-in date, the landlord put forth a number of documents to sign, with arrows pointing to where her signature should be affixed. The tenant pointed out that there was no date by her signature on the landlord's copy of the condition inspection report.

The tenants contended that, as to the landlord's copy of the condition inspection report, which shows a move-out inspection of June 24, 2013, the condition inspection report is false as they moved out on June 13, 2013, as shown by the U-haul invoice with a date for checking out the vehicle on June 14, 2013.

The tenants contended that the rental unit was far from perfect when they moved in, as shown by their photographic evidence. Among some of the issues with the rental unit was peeling caulking around the tub, a poorly patched hole on a bedroom door, dirty and peeling cupboards, and holes in walls.

The tenants submitted that they re-caulked the tub area, patched, sanded and painted the kitchen cupboards, and repaired the holes in the wall.

The tenants testified that the floors were far from perfect.

The tenants denied receiving the letter of June 10, 2013, which was in the landlord's evidence.

In rebuttal to the tenants' testimony, the landlord stated that the tenants lied as they never said when they moved in or out.

*Landlord's witness-*

The landlord's witness stated that the floor, baseboards and paint were new at the beginning of the tenancy, and that when the tenants moved out, they did so in a rush and left the rental unit unclean.

In response to my question, the witness said he was not present at the tenants' move-in and therefore did not know the condition of the rental unit at the beginning of the tenancy.

***Tenants' application-***

The tenants' monetary claim is \$1280.27, comprised of their security deposit of \$445, doubled to \$890, loss of quiet enjoyment for 11 days in June 2013, for \$340.27, and the filing fee of \$50.

In support, the tenants contended that they are entitled to a return of their security deposit, doubled, as the landlord failed to conduct move-in or move-out inspections and did not properly prepare condition inspection reports.

The tenants submitted that the landlord was provided their written forwarding address on May 31, 2013, when they gave their notice to vacate to the landlord.

As to their claim for loss of quiet enjoyment, the tenants submitted that on June 4, the landlord unlocked their door and walked in with a prospective tenant, at which time they printed the landlord's requirement to provide notice to the tenants of entry into the rental unit.

The tenant submitted that on June 10, the parties met to discuss the move-out, at which time the landlord began yelling at them, and informed them they would never get their security deposit back.

The tenants submitted that from June 4, forward to their move-out, they never felt safe as the landlord had no qualms about entering the rental unit.

The tenants contended that due to the landlord's behaviour, they called the police department, and filed an incident report, as shown by their documentary evidence.

The tenants submitted that the landlord's language to them became quite abusive, and that he began issuing notices every night of his intent to enter the rental unit.

**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, both parties 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.

***Landlord's application-***

I find the landlord submitted insufficient evidence that the condition inspection report he supplied into evidence was valid. In reaching this conclusion, I reviewed the tenants' documentary evidence, which shows they did not move from their home province to the rental unit until sometime after August 18, 2011, as indicated by the U-haul receipt for their move. This led me to conclude that the move-in date filled in on the landlord's copy of the condition inspection report, August 1, 2011, was false. Likewise, the move-out inspection date of June 24, 2013, on the landlord's copy of the condition inspection report, I find to be false due to the tenants' invoice for their U-haul, for a date of June 14, 2013.

I also note that as to the signatures of tenant AH on the landlord's copy of the condition inspection report, there were no dates by the signature, which led me to further question the credibility of the landlord's condition inspection report.

In reviewing all oral and documentary evidence, I find that the landlord failed to convince me that he conducted a move-in or move-out inspection with the tenants, and to complete the condition inspection reports, and I therefore find the landlord failed to comply with his obligations under sections 23 and 35 of the Act, resulting in the extinguishment of the landlord's right to make a claim against the tenants' security deposit for damage.

In the absence of a condition inspection report, I find the landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the landlord has not proven a monetary claim for the alleged damages to the rental unit.

I dismiss the landlord's application without leave to reapply.

As the landlord's application is dismissed, I do not find he is entitled to recovery of the filing fee.

***Tenants' application-***

*Security deposit-*

As I have determined that the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he extinguished his right to file a claim against the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address, according to section 38 of the Act.

In the case before me, the tenants provided their written forwarding address on May 31, 2013 and I accept that June 15, 2013, was the last day of the tenancy.

Therefore the landlord was required to return the full amount of the tenants' security deposit to the tenants by June 30, 2013 and that he failed to do so.

I therefore find the tenants are entitled to a monetary award of \$890, or double their security deposit of \$445.

*Loss of quiet enjoyment-*

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act the notice of entry must contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The documentary evidence of the tenants shows that the landlord posted on the door a notice of entry on a daily basis beginning on June 4 and ending on June 10, for entry the following day anytime between the hours of 10:00 a.m. and 9:00 p.m.

I find the landlord's repeated notices to be excessive and in violation of section 29 of the Act, as the failed to state a specific time of entry as the landlord is not permitted to give a wide range of hours in which the entry may be made.

Additionally, Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received each of the notices of entry three days after it was posted, meaning entry was not permitted to occur the next day.

I also accept the tenants' undisputed evidence and find that the landlord unlocked the tenants' door without notice and entered the rental unit. I also accept that the tenants were fearful of the landlord, due to the demeanor and comments made during the hearing.

I therefore find that the tenants were deprived of their rights to quiet enjoyment and find they are entitled to monetary compensation. I find the request of the tenants for loss of quiet enjoyment for 11 days of in June 2013, the last month of their tenancy to be reasonable.

I therefore grant them a monetary award of \$335.61 ( $\$928 \text{ monthly rent} \times 12 \text{ months per year} = \$11,136 \div 365 = \$30.51 \text{ daily rate} \times 11 \text{ days}$ ).

I allow the tenants recovery of their filing fee of \$50.

Due to the above, I find the tenants are entitled to a total monetary award of \$1275.61, comprised of double their security deposit of \$445 for \$890, loss of quiet enjoyment for \$335.61, and the filing fee of \$50.

### Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenants' application for monetary compensation is granted.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1275.61, 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*.

Dated: December 23, 2013

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Residential Tenancy Branch

