



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MND, MNSD, FF

### **Introduction**

This hearing was convened in response to cross applications.

On October 17, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On September 19, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### **Issue(s) to be Decided**

Is the Landlord entitled to compensation for unpaid rent/lost revenue and/or compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2011; that the Tenant agreed to pay monthly rent of \$1,250.00 by the first day of each month; that the Tenant paid a security deposit of \$1,250.00; that the keys to the rental unit were returned on September 01, 2013; that a condition inspection report was not completed at the beginning or the end of this tenancy; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, on September 04, 2013.

The Landlord and the Tenant agree that the Tenant only paid \$900.00 in rent for August of 2013. The Landlord is seeking the remaining \$350.00 in rent that was due on August 01, 2013.

The Landlord is seeking compensation of \$1,196.00 for replacing the carpets in the living room and one bedroom and \$69.41 for steam cleaning the carpet. The Landlord submitted a receipt to show these expenses were incurred.

The female Landlord stated that the carpets were in "perfect" condition at the start of the tenancy. The Landlord submitted photographs that were taken by a real estate agent in February or March of 2011. These photographs do not show the carpet very clearly, although the areas that can be seen appear to be in reasonable condition.

The female Tenant stated that at the start of the tenancy the carpet in the living room had some yellow stains and burn marks near the fireplace and that the downstairs carpets were worn but otherwise were "fine".

The female Landlord stated that the carpets at the end of the tenancy were very dirty; that they were stained with a variety of things; that she steam cleaned the carpets with a rented steam cleaner; that she was unable to remove the stains in the living room and one bedroom; and that the carpets were replaced in those two rooms.

The Landlord submitted photographs of the carpet that were taken during the second week of September of 2013. The photographs show the carpet is extremely dirty in various locations. The male Landlord stated that the carpets were approximately 11 years old.

The female Tenant stated that the carpet was not cleaned at the end of the tenancy; that the carpet was steam cleaned approximately every two weeks during the tenancy; that the carpets were dirty at the end of the tenancy; but she does not recall them being as dirty as the photographs depict.

The Landlord is seeking compensation of \$204.75 for removing lumber left at the unit by the Tenant. The Landlord submitted a receipt to show the Landlord paid this amount to rent a truck. The male Landlord stated that the truck was rented from his employer and

was used to dispose of the wood. The female Tenant stated that the lumber was left at the rental unit at the end of the tenancy.

The Landlord claimed \$445.79 in compensation for cleaning supplies, painting supplies, and floor repair supplies.

At the hearing the female Landlord stated that \$14.95 of the \$445.79 claim is for a kit used to repair scratches on the laminate flooring. The Landlord submitted photographs of damage to the laminate flooring. The female Tenant agreed that the damage occurred during the tenancy. The Landlord submitted a receipt to show that a floor repair kit was purchased for \$14.95. The Landlord is also claiming compensation for the one hour spent repairing the floor.

At the hearing the female Landlord stated that \$72.03 of the \$445.79 claim is for cleaning supplies. The Landlord submitted photographs of the rental unit which show that the rental unit was not left in clean condition. The Landlord submitted receipts to show that cleaning supplies in the amount of at least \$72.03 were purchased.

The Landlord is also claiming compensation for the time they spent cleaning the rental unit, which the Landlord estimates was approximately 40% of 92 hours, which is 36.5 hours.

The female Tenant stated that the rental unit was professionally cleaned at the end of the tenancy; that the Tenant paid \$85.00 to have the unit cleaned; and that the cleaner did not clean the carpet or the oven at the end of the tenancy.

At the hearing the female Landlord stated that \$300.00 of the \$445.79 claim is for paint supplies. The Landlord submitted several receipts to show that a variety of supplies were purchased. The Landlord has not broken down the receipts to clearly establish the nature of the items purchased, however upon viewing the receipts I am satisfied that at least \$230.49 in paint supplies were purchased.

The Landlord submitted photographs of the rental unit which show that the walls have been written on in two locations, that there were many holes in the walls which are larger than holes that would be considered normal wear and tear; and that the baseboards were damaged. The female Landlord stated that the rental unit had been painted just prior to the start of the tenancy.

The Landlord is also claiming compensation for the time spent painting the rental unit, which the Landlord estimates was approximately 60% of 91 hours, which is 54.5 hours.

The female Tenant stated that there were some holes in the walls at the start of the tenancy; that they did make some large screw holes to install a baby gate; that there was some writing on the walls; and that the baseboards were damaged at the start of the tenancy.

The Landlord is seeking compensation in the amount of \$1,250.00 for lost revenue from the month of September. The female Landlord stated that the rental unit was advertised in August but the Landlord elected not to show it to potential renters for September due to the need to clean and repair the unit. The female Landlord stated that the unit has been rented for December 01, 2013.

The Landlord and the Tenant agree that one of the terms of their tenancy agreement required the Tenant to leave the equivalent of \$300.00 worth of oil in the oil tank at the end of the tenancy. The female Tenant stated that she does not know how much oil was in the tank at the end of the tenancy, but she agrees it was less than \$300.00 worth of oil. The female Landlord stated that the oil tank was empty at the end of the tenancy and that she had to add oil before the furnace could be started.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution until more than 15 days after the tenancy ended and more than 15 days after receiving a forwarding address for the Tenant, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit, which is \$2,500.00.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$350.00 of the rent that was due on August 01, 2013. As the Tenant is obligated to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant owes the Landlord \$350.00.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean the carpet at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs that were submitted in evidence, which clearly show the carpets are dirty. Although the Tenant does not recall the carpets being this dirty, I find that the photographs clearly indicate they were. I therefore find that the Landlord is entitled to compensation for the \$69.41 paid to rent a carpet cleaner.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the

replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. As the Landlord estimated that the carpets were over ten years old, I find that the carpets had exceeded their useful life. I therefore find that the Landlord is not entitled to compensation for replacing the carpet.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant left lumber at the rental unit. I therefore find that the Landlord is entitled to compensation for the \$204.75 paid to rent a truck to remove the lumber.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage to the laminate flooring. I therefore find that the Landlord is entitled to compensation for the \$14.95 paid for supplies used to repair the floor. I also award compensation of \$20.00 for time spent repairing the floor, which is based on an hourly rate of \$20.00, which I find to be reasonable for labour of this nature.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs that were submitted in evidence, which clearly show additional cleaning was required. Although I accept the Tenant's testimony that the Tenant paid \$85.00 to have the unit cleaned, the photographs clearly indicate that additional cleaning was required. I therefore find that the Landlord is entitled to compensation for the \$72.03 paid for cleaning supplies.

While the Landlord is entitled to compensation for the time it took to clean the rental unit, I am not satisfied that it took 36.5 hours to clean the rental unit. On the basis of the photographs submitted in evidence, I find that it would be reasonable to conclude that it would have taken approximately 24 hours to clean the rental unit. In determining this matter I note that the Tenant is only obligated to leave a rental unit reasonably clean and I find 24 hours would have been more than adequate to clean the areas depicted in the photographs. I therefore award compensation of \$480.00 for cleaning the unit, which is based on an hourly rate of \$20.00, which I find to be reasonable for labour of this nature.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage to the walls. In reaching this conclusion I was heavily influenced by the photographs that were submitted in evidence, which show that the damage to the wall exceeds normal wear and tear. In particular, I find that the writing on the wall, the larger screw/nail holes, and the broken door casing exceeds normal wear and tear. Even if I were to accept the Tenant's testimony that there was some damage to the baseboards at the start of the tenancy, the photographs clearly show that damage to the door casing is relatively new.

The Residential Tenancy Policy Guidelines show that the life expectancy of paint is four years. As the Landlord declared that the rental unit was painted just prior to the start of the tenancy, which is corroborated by the photographs taken by the realtor, I accept that the paint in the unit was approximately 2 years old at the end of this tenancy. I therefore find that the paint in the living room has depreciated by 50% and that the Landlord is entitled to 50% of the cost of paint supplies purchased, which is at least \$115.24.

I also find that the Landlord is entitled to compensation for the time it took to repair and paint the damaged walls, although the Landlord is not necessarily entitled to compensation for the time it took to repaint the entire rental unit. On the basis of the photographs submitted in evidence, I find it reasonable to conclude that it would have taken approximately 24 hours to repair the walls damaged by the Tenant and that the Landlord is entitled to compensation of \$20.00 per hour. I therefore award compensation of \$240.00, which is 50% of that time.

On the basis of the evidence before me, I find that the condition of the rental unit did interfere with the Landlord's ability to find new tenants for September 01, 2013. In my view it is not unreasonable to expect that it would have taken the Landlord a week or two to repair the aforementioned damages, which includes time to attempt to clean the carpets and then to arrange to have new carpet installed. As it is generally difficult to find new tenants for any time other than the beginning of the month, I find that the Landlord is entitled to compensation, in the amount of \$1,250.00, for lost revenue for September of 2013.

On the basis of the undisputed evidence, I find that the tenancy agreement required the Tenant to leave the equivalent of \$300.00 of heating oil in the tank at the end of the tenancy. On the basis of the testimony of the female Landlord, I find that the oil tank was empty at the end of the tenancy, as this testimony was not inconsistent with the testimony of the female Tenant. I therefore find that the Tenant must pay the Landlord \$300.00 for heating oil.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The Tenant has established a monetary claim, in the amount of \$2,500.00, which is double the security deposit.

The Landlord has established a monetary claim, in the amount of \$3,166.38, which is comprised of \$350.00 in unpaid rent; \$1,216.38 in damages; \$1,250.00 in lost revenue; \$300.00 for heating oil; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two awards, I find that the Tenant owes the Landlord \$666.38 and I grant the Landlord a monetary Order for that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 28, 2013

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Residential Tenancy Branch

