



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding New Orleans Court  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, MNR, MNSD, OPR, FF

### Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant called in together with her mother who assisted the tenant and also provided evidence as a witness for the tenant. Since the applications were filed, the tenancy has ended. The tenant is no longer contesting a Notice to End Tenancy and the landlord is not seeking an order for possession.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent for December?

Is the landlord entitled to additional amounts for cleaning or repairs?

Is the landlord entitled to retain the tenant's security deposit?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in September, 2013. The monthly rent was \$950.00, payable on the first of each month. The tenant paid a \$475.00 security deposit in August. The landlord's agent testified that the tenant failed to pay rent for December and the landlord served her with a 10 day Notice to End Tenancy for unpaid rent dated December 3, 2013. The tenant applied to dispute the Notice to End Tenancy on December 6, 2013, but the tenant chose to move out of the rental unit on December 13<sup>th</sup>.

The landlord has claimed payment of December rent in the amount of \$950.00 and payment for cleaning and painting in the amount of \$247.00., carpet cleaning of \$52.50 and \$80.00 for the disposal of furniture abandoned by the tenant. The landlord's agent testified that the tenant painted two walls a strong orange colour and some baseboards were painted blue. She said that because of the choice of colours they had to be repainted.

The tenant disputed all of the landlord's claims. She testified that the rent for December was paid in full, in cash, left in the landlord's office at the rental property. When the tenant received a 10 day Notice to End Tenancy, she told the landlord that the rent payment was made. The tenant submitted evidence to show that, apart from the initial payment, part of which was paid by cheque, the rent was always paid by cash. The tenant included copies of her bank statements showing the withdrawals made to pay rent. The tenant testified that she was never given receipts for any of her rent payments. The only receipt she was given was a receipt for payment of the security deposit, even though every payment of rent was made in cash. The tenant testified that after she made the December rent payment, the landlord's resident manager left her employment and was replaced by a new manager. The tenant reported the theft of her rent money to the police on December 5, 2013.

The tenant and her mother testified that there were serious problems with the rental unit. The tenant repainted part of the rental unit because the paint was in terrible shape. There was a leaking roof in the bathroom and water had leaked into the bathroom walls. The bathroom floor was rotten and sinking. The tenant said that when she moved in there was furniture that had been left in the unit by the previous tenant. The tenant said that she made numerous attempts to have the landlord make repairs to the unit, but her requests were ignored. The tenant provided her phone records as evidence of her frequent requests to the landlord. The tenant's mother also called the landlord on her daughter's behalf in November because the landlord had not responded to the repair requests.

The landlord testified that receipts were always given for rent payments. She disputed the tenant's evidence as to the lack of receipts. The landlord also insisted that no rent payment was made for December. The landlord acknowledged that the landlord's manager was replaced by a new manager in December. The landlord did not provide any evidence, such as a copy of a receipt book, to show that receipts had been given for rent payments and the landlord did not seek to have the manager or the former manager called as a witness to testify about the December rent payment. The landlord simply said that the manager was unavailable to testify.

The landlord submitted some pictures of the rental unit; they were printed on photocopy paper and the image quality was poor. The landlord intended them to show that the wall had been painted, handles were missing, the carpet was not cleaned and furniture had been left in the rental unit. The landlord submitted a receipt for carpet cleaning dated January 4, 2014 in the amount of \$50.00. The landlord did not supply receipts for other claimed amounts, but there was a handwritten note from the current building

manager that referred to a cleaning charge of \$247.50 and a charge of \$80.00 for removing furniture. The tenant said that the rental unit was left in reasonable condition at the end of the tenancy. She said the unit was in very poor condition when the tenancy began. She submitted a USB flash drive said to contain video and pictures of the rental unit. The tenant did not supply this evidence to the landlord and for that reason I have not considered the tenant's digital evidence in arriving at a decision in this matter.

### Analysis

The tenant provided evidence that established that the rent was consistently paid in cash. The tenant testified that she paid December rent in cash by putting the cash through the door of the locked building manager's office. At the hearing the landlord's agent denied that the December rent was paid. She also disputed the testimony that no receipts were given, but the landlord did not supply any evidence, such as a receipt book to support her testimony. Neither the current nor the former building manager was called upon to provide evidence in support of the landlord's position. I prefer the tenant's direct evidence that rent was paid for December to the evidence of the landlord's agent that it was not paid. I have made this finding based on the tenant's direct evidence under affirmation, which is buttressed by documents that supplied evidence of a consistent history of cash payments. Factors in my decision are the lack of evidence from the landlord to show that receipts were given and the absence of testimony from the building manager.

The tenant claimed that there was furniture left in the rental unit when she moved in and that the items remained when she moved out. Based on the evidence supplied by the landlord, I find that the rental unit was painted inappropriate colors and required cleaning and painting after the tenants moved out. Although I accept the tenant's evidence that there was some furniture found in the rental unit when she moved in, I find that the tenant left some additional items when she moved out. I note that, according to the landlord, one of the items left behind was a mattress; this was not an item that the tenant said was in the unit when she moved in and I find it unlikely that she would have accepted the unit and moved in with a discarded mattress in place.

I dismiss the landlord's claim for recovery of December rent in the amount of \$950.00, but I allow the landlord's claim for cleaning and painting of \$247.50, carpet cleaning of \$52.50 and I allow \$40.00 of the \$80.00 claimed for disposal of furniture. The total monetary award to the landlord is the sum of \$340.00. The landlord is entitled to recover the \$50.00 filing fee for the application for a total award of \$390.00.

With respect to the tenants' application, the tenants were partially successful. The tenant succeeded with respect to the issue of the December rent payment, but because the tenant abandoned her claim to cancel the Notice to End Tenancy before the hearing and because she failed to provide all her evidence to the landlord, I decline to award the tenants the cost of the filing fee for her application.

### Conclusion

Section 72 of the *Residential Tenancy Act* permits me to set off the amount awarded to the landlord against the tenants' security deposit that it holds. The security deposit held by the landlord is the sum of \$475.00. I order that the landlord retain the sum of \$390.00 from the deposit that it holds and I grant the tenants a monetary award for the remaining balance of the security deposit in the amount of \$85.00. This order may be registered in the 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: February 17, 2014

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Residential Tenancy Branch

