



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MND, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 28, 2013 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were mailed to the Tenant at the forwarding address provided by the Tenant, via registered mail. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on May 01, 2010 and that it ended on June 30, 2013. He stated that a condition inspection report was completed at the start of the tenancy and at the end of the tenancy, copies of which were submitted in evidence. The Tenant has signed both reports to indicate she agrees the reports fairly represent the condition of the rental unit at the time the report was completed.

The Landlord is seeking \$569.82 for painting the rental unit, which is a prorated portion of the cost of painting. The Landlord submitted a copy of an invoice to show that the Landlord was charged \$1,486.50 for painting the unit. The condition inspection report completed at the start of the tenancy indicates the rental unit was newly painted. In the condition inspection report completed at the end of the tenancy the Tenant agreed that the rental unit required painting.

The Agent for the Landlord stated that he did not personally view the rental unit at the end of the tenancy so he does not know why it required painting. He speculates that it required painting because the walls were deemed either too dirty to clean or they had more scrapes and scuffs than is typical after a tenancy of this length.

The Landlord is seeking \$152.25 for cleaning the carpet. The condition inspection report completed at the end of the tenancy indicates the carpet in the rental unit need cleaning. The Landlord submitted an invoice to show that the Landlord was charged \$152.25 to clean the carpet in the unit.

During the hearing the Agent for the Landlord withdrew the \$31.50 claim for "hauling" and the \$10.00 claim for "cleaning".

The Agent for the Landlord stated that the Tenant had an \$11.50 "credit" when this tenancy ended, which the Landlord would like to apply to damages to the rental unit. He stated that prior to the filing of this Application for Dispute Resolution, the Tenant paid the Landlord \$150.00 in partial compensation for the aforementioned damages.

### Analysis

On the basis of condition inspection reports, I find that the Landlord and the Tenant agreed that the rental unit was newly painted at the start of the tenancy and that it required painting at the end of this tenancy.

Section 37(2)(a) of the *Act* requires a tenant to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. I find that the Landlord submitted insufficient evidence to establish that the rental unit required painting at the end of the tenancy because it was unclean or damaged beyond what is considered "normal wear and tear". In reaching this conclusion I was heavily influenced by the absence of testimony from a party who viewed the rental unit at the end of the tenancy and/or documentary evidence, such as photographs, that shows the need to paint was the result of dirt or damage that is beyond normal wear and tear.

In determining this matter I have placed little weight on the fact the Tenant agreed the rental unit required painting at the end of the tenancy, as I find the wording to have limited probative value. I find it possible that the Tenant simply agreed that the rental unit required painting because the unit had been newly painted at the start of the tenancy and the paint had deteriorated over the 38 month tenancy, as paint typically does.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As the Landlord has failed to establish that the rental unit required

painting because the unit was not clean or was damaged beyond “normal wear and tear”, I dismiss the Landlord’s claim for painting the rental unit.

On the basis of condition inspection report completed at the end of the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the carpet in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant’s failure to comply with the *Act*, which in these circumstances is \$152.25 for cleaning the carpets.

On the basis of the undisputed evidence, I find that the Tenant paid the Landlord \$150.00 in compensation for damage to the rental unit. I find that this payment should be applied to the cost of cleaning the carpet, leaving \$2.25 owing for cleaning the carpet.

On the basis of the undisputed evidence, I find that the Tenant had a credit of \$11.50 when this tenancy ended. I find that \$2.25 of that credit should be applied to the remaining debt for cleaning the carpet, leaving a credit balance of \$9.25.

As the Landlord has failed to establish that the Tenant owed money to the Landlord for damages when the Landlord filed this Application for Dispute Resolution, I find that the Landlord is not entitled to recover the fee for filing the Application for Dispute Resolution.

### Conclusion

As the Landlord has failed to establish that the Landlord is entitled to further compensation for damage to the rental unit, the application for a monetary Order is dismissed.

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: March 19, 2014

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Residential Tenancy Branch

