



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, O, FF

### Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting them to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in July 2009 at which time the tenants paid a \$575.00 security deposit and that it ended on July 15, 2013.

The parties completed a move-in condition inspection report at the outset of the tenancy and the landlord testified that she left the original with the tenants for their signature and that they did not sign and return the report to her. The tenants acknowledged that they were aware that they had the original copy of the report. The parties were in disagreement about what occurred when they were inspecting the unit at the end of the tenancy. The tenants claimed that they gave the condition inspection report to the male landlord, M.M., who conducted the inspection, and asked him to sign which he refused to do. M.M. denied having been asked to sign a condition inspection and provided a written statement from his teenage son who was present in which the son stated that he could not recall the tenant having asked M.M. for a signature. The parties agreed that the landlords did not fill out any paperwork at the end of the tenancy with respect to the condition of the rental unit.

The landlords seek to recover \$2,772.00 in unpaid rent which represents \$3,162.00 owing at the end of July less \$390.00 in payments made by the tenants since that time. The tenants agreed that this is the total amount of rent which they did not pay, but claim

that because the landlord sold the rental unit, they were entitled to receive a 2 month notice to end tenancy which would have entitled them to receive one free month's rent. They therefore claim that they should be forgiven one month's rent.

The landlords testified that at the end of the tenancy, the rental unit had an unpleasant odour and it was clear that the carpet had not been cleaned. They testified that there were a number of stains which came out with cleaning. The tenants testified that they did spot cleaning on carpets, but did not have a machine that allowed them to shampoo, although they vacuumed several times. They argued that the move in condition inspection report indicated that there were marks on the carpet and that these were the only marks on the carpet at the end of the tenancy. The landlords seek to recover \$118.00 for the cost of cleaning the carpet.

The landlords testified that they installed the carpet in 2008 and that despite cleaning, the stains in the room which the tenants used as their office had stains from what appeared to be nail polish. The landlords stated that because they believed the stain to be caused by nail polish, they did not attempt to remove it and chose to replace the carpet at a cost of \$231.84 for the carpet and \$117.00 for labour. The landlords seek to recover the \$348.84 paid to replace the carpet. The tenants acknowledged that there was a stain in the carpet and believed that it came from the bottom of a paint can which was set on the carpet while the walls were being repainted in 2009. They acknowledged having overlooked the stain when they vacated the rental unit.

The landlords seek to recover \$170.00 as the cost of cleaning the blinds at the end of the tenancy. They testified that the blinds had mould on them and provided evidence showing that they spent \$170.00 to have them professionally cleaned and re-hung. The landlords testified that the blinds required cleaning primarily because mould had grown on them. The tenants testified that their daughter cleaned them with a bleach solution on the morning of the move out condition inspection.

The landlords seek to recover \$160.00 as the cost of cleaning mould from around the windows. The landlords engaged a cleaning service to clean the area, but when the cleaners arrived, they refused to do the work because they believed it to be a health risk. The landlords performed the cleaning themselves, using the cleaning service's estimated charge of \$160.00 as the amount to which they are entitled. The tenants argued that even though they cleaned the window frames and sills, the mould kept reappearing and they suggested that the cause of the mould was not from a lack of cleanliness, but from poor ventilation. The tenants argued that they would have cleaned the area at the time of the move out inspection if M.M. had brought it to their attention, which he failed to do.

The parties agreed that the landlords are entitled to recover \$30.00 as the cost of repairing a hole in the wall.

The landlords seek to recover \$53.23 as the cost of replacing plants in the garden which they claim the tenants allowed to die and removed. The landlords testified that at the beginning of the tenancy, there were several sarcococcas and ferns in place in the front garden area and that at the end of the tenancy, these had been removed. The landlords purchased 3 sarcococcas and 1 fuschia to replace the sarcococcas and ferns which had been lost. The tenants argued that they complied with the general upkeep required by the addendum, but acknowledged that they were unable to do so in the last 6 weeks of the tenancy. They argued that the replacement of the plants was a betterment which the landlord put into place in order to give the property more appeal to prospective purchasers.

The landlords seek to recover one half, or \$120.00, of a \$240.00 invoice for yard maintenance. They testified that because the tenants failed to maintain the yard and garden, they had to retain a yard maintenance service to trim the lawn, clean up the gardens and re-seed several areas for grass. The landlords are claiming for just half of the invoice because they acknowledged that part of the maintenance constituted an improvement to the yard and gardens. The tenants argued that they complied with the requirement to maintain the yard and gardens.

The landlords seek to recover interest on the amount claimed and also seek to recover the \$50.00 filing fee paid to bring their claim.

### Analysis

At the hearing, the tenants agreed that the landlords were entitled to retain their security deposit. For this reason, I find that the issue of whether the landlords complied with their obligations with respect to the condition inspection report is moot.

I find that the landlords are entitled to recover the entire \$2,772.00 in rent which remains unpaid. The tenants chose to enter into a mutual agreement to end their tenancy rather than demand to be given a 2 month notice and all the evidence shows that the landlord was ending their tenancy not because he was selling the rental unit, but because they were significantly in arrears in their rental payments. I award the landlords \$2,772.00.

The tenants resided in the rental unit for 4 years. Residential Tenancy Policy Guideline #1 provides that when tenants live in a rental unit for one year, they are responsible for the cost of shampooing the carpet. I find that after a tenancy of 4 years in duration, it is reasonable to expect that the tenants would shampoo the carpet. I find that the

landlords are entitled to recover the \$118.00 paid to clean the carpet and I award them that sum.

In order to be successful in their claim for the cost of replacing the carpet, the landlords must prove both that the tenants damaged the carpet and that it required replacement. The tenants acknowledged having damaged the carpet, but I am not satisfied that the carpet required replacement. The landlords made no attempt to remove the stains and I am unable to find that a complete replacement was required. For this reason, I dismiss the claim for carpet replacement.

Turning to the issues of the blinds and the mould around the windows, the landlords provided photographs showing that the window areas had an excessive amount of mould growth and I am satisfied that the tenants failed to leave the window frames and sills in reasonably clean condition. While I appreciate that the mould kept re-growing, the presence of mould is sadly one of the predominant features of homes in the lower mainland and the tenants had a responsibility to be vigilant in cleaning. I find that the landlords are entitled to recover the value of their labour in cleaning the windows and I accept that \$160.00 is a reasonable valuation. I award the landlords \$160.00 for window cleaning. The landlords claimed that the blinds were not adequately cleaned, but they provided no photographs showing that this was the case and I am not satisfied on the balance of probabilities that the blinds were not adequately cleaned. I therefore dismiss the claim for the cost of cleaning blinds.

As the parties agreed that the landlords are entitled to recover \$30.00 to repair the hole in the wall, I award the landlords \$30.00 for that labour.

The tenants had a responsibility under the terms of the addendum to the tenancy agreement and pursuant to Residential Tenancy Policy Guideline #1 to maintain the yard and gardens on the residential property. I am satisfied on the balance of probabilities that they failed to maintain the gardens and yard in a reasonable manner and that the landlords suffered a loss as a result. In the absence of evidence that some outside force caused the plants in question to die, I find that their demise was caused by a failure on the part of the tenants to maintain them and I find that the landlords are entitled to recover the cost of their replacement. I award them \$53.23 as the cost of replacing plants. I further find that the minimal yard maintenance performed by the tenants was insufficient to fulfill what was required of them under the tenancy agreement and Policy Guideline and I find that the landlords are entitled to recover the cost of bringing the yard and gardens to a reasonable state at the end of the tenancy. I find that the landlords are entitled to recover the one half of the invoice which they are claiming and I award them \$120.00.

I dismiss the landlords' claim for interest as there is no provision in either the Act or their tenancy agreement for them to collect interest on a prospective monetary claim.

As the landlords have been substantially successful in their claim, I find that they are entitled to recover the \$50.00 filing fee paid to bring their application and I award them that sum.

### Conclusion

In summary, the landlords have been successful as follows:

Rent	\$2,772.00
Carpet cleaning	\$ 118.00
Window cleaning	\$ 160.00
Hole repair	\$ 30.00
Plant replacement	\$ 53.23
Garden and yard maintenance	\$ 120.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$3,303.23</b>

The landlords have been awarded \$3,303.23. I order them to retain the \$575.00 security deposit in partial satisfaction of their claim and I grant them an order under section 67 for the balance of \$2,728.23. This order may be filed in the Small Claims Division of the Provincial 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: March 05, 2014

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Residential Tenancy Branch

