



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MNR, MND, MNSD, RR, FF

### **Introduction**

This hearing was convened in response to cross applications.

On January 24, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; 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 October 28, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of her security deposit; and for the return of personal property.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

The Landlord stated that the Landlord's Application for Dispute Resolution and documents/photographs the Landlord wishes to rely upon as evidence were served to the Tenant, via registered mail, on January 27, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that the Tenant's Application for Dispute Resolution was personally served to the Landlord on October 28, 2013. The Landlord acknowledged receipt of the Tenant's Application for Dispute Resolution.

The Tenant stated that documents and a USB stick the Tenant wishes to rely upon as evidence were served to the Landlord, in person, on January 31, 2014. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings. The Landlord acknowledged that he has been able to view the images on the USB stick.

The Tenant submitted photographs to the Residential Tenancy Branch on November 01, 2013. The Tenant stated that copies of the photographs were not served to the Landlord and the photographs were therefore not accepted as evidence. The Tenant stated that the photographs are identical to the images served to the Landlord on the USB stick.

There was insufficient time to conclude the issues on dispute on February 06, 2014, so the hearing was adjourned. The hearing was reconvened on April 08, 2014 and was concluded on that date.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/ lost revenue, unpaid utilities and damage to the rental unit; is the Tenant entitled to compensation for property left in the rental unit; should the security deposit be retained by the Landlord or returned to the Tenant; and is there a need to issue an order requiring the Landlord to return personal property to the Landlord?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2013; that the Tenant agreed to pay monthly rent of \$765.00 by the first day of each month; and that the Tenant paid a security deposit of \$400.00.

The Landlord and the Tenant agree that on August 20, 2013 the Landlord personally served the Tenant with a One Month Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by September 30, 2013. The parties agree that the Tenant disputed the Notice to End Tenancy; that a hearing was scheduled for October 09, 2013, for the purposes of determine the merits of the Notice to End Tenancy; and that the Tenant never told the Landlord that she had cancelled the October 09, 2013 hearing.

The Landlord stated that the rental unit was vacated on September 14, 2013 or September 15, 2013. He stated that on one of those dates the Tenant and a male living with the Tenant told him they were moving out and that they asked him to move his vehicle on one of those dates so they could move property out of the rental unit.

The Tenant stated that the rental unit was vacated by September 30, 2013. She stated that on September 14, 2013 she told the Landlord that she was moving out of the rental unit; that she or the male living with her did ask the Landlord to move his vehicle on that date so they could move property out of the rental unit; and that they did not finish moving all of their property until September 30, 2013.

The Tenant stated that she attempted to return the keys to the rental unit to the Landlord on October 02, 2013 and that he refused to take them from her, so she left them in front of the door of the rental unit. The Landlord stated that the Tenant did not

attempt to return the key to the rental unit to him and that on October 02, 2013 he located them in front of the door of the rental unit.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her forwarding address, in writing. The Tenant stated that she handed it to him on October 02, 2013 and the Landlord stated that it was handed to him during the middle of the first week of October of 2013.

The Landlord is seeking compensation, in the amount of \$176.54, for unpaid rent for the first week of October of 2013. He contends that he was unable to enter into a new tenancy until the hearing on October 09, 2013, as he did not have the right to legally possess the rental unit until the hearing on that date.

The Landlord is seeking compensation, in the amount of \$76.45, for the Tenant's portion of an unpaid cable bill, which was submitted in evidence. The Tenant agreed that she is obligated to pay this amount of this bill.

The Landlord is seeking compensation, in the amount of \$67.23, for the Tenant's portion of an unpaid hydro bill, which was submitted in evidence. The Landlord and the Tenant agree that the Tenant is obligated to pay 50% of a pro-rated portion of this bill.

The Landlord is seeking compensation, in the amount of \$192.50, in compensation for the time he spent cleaning the rental unit, the deck, and the yard. The Landlord stated that all of these areas needed additional cleaning.

The Tenant stated that the rental unit, deck, and yard were clean at the end of the tenancy, with the exception of garbage left beside the garbage cans. She stated that the garbage was left beside the deck because garbage was not scheduled to be picked up until a couple of days after the end of the tenancy. She acknowledged that debris from the trees had collected on a plastic tube left in the yard.

The Tenant submitted digital images of the rental unit at the end of the tenancy. At the first hearing the Tenant stated that all of the digital images were taken at the end of the tenancy. At the reconvened hearing the Landlord referred to the digital date stamp for the images and noted that many of the images were taken many months prior to the end of the tenancy. Upon reviewing the date stamps the Tenant stated that she appears to have confused some of the digital images and she acknowledged that they were not all taken at the end of the tenancy.

The Landlord submitted photographs of the rental unit which demonstrate that a few items were left on the kitchen counter; that show some garbage was neatly piled on the deck and beside a garbage can near the deck; and that show there is some organic matter on a plastic swimming tube in the yard, which the Landlord contends is feces.

The Witness for the Landlord, who is the Landlord's girlfriend, stated that she observed a variety of garbage piled on the deck at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$6.00, for the cost of disposing of the garbage left at the rental unit. The Landlord stated that he had to take the garbage to the city dump because the garbage container contained fish waste, which the city would not pick up at the curb.

The Tenant stated that she had recently been cleaning fish she had caught; that she had placed the remnants in a plastic bag; and that she discarded it in the garbage can.

The Landlord is claiming compensation, in the amount of \$15.00, for replacing the garbage can that contained the fish waste. He stated that the fish waste was not in a plastic bag; that it was placed directly into the garbage can; that the garbage can smelled as a result of the fish waste; that he was going to clean the garbage can; that he was advised that cleaning would not eliminate the smell; so he discarded the garbage can.

The Landlord is claiming compensation for repairing damage to the walls. The Landlord stated that the rental unit was newly painted prior to the start of the tenancy agreement and the Tenant agrees that the walls were in good condition at the start of the tenancy.

The Landlord and the Tenant agree that the Tenant damaged the walls above the windows in two bedrooms during the tenancy, by making several large nail holes in the wall. The Landlord submitted photographs of the damage, which he contends were taken on October 01, 2013. The Tenant stated that these holes were repaired on September 28, 2013. The Tenant submitted digital images of these rooms, however they are taken from a distance and do not demonstrate whether the holes have been repaired.

The Landlord and the Tenant agree that the Tenant repaired some wall damage on the wall between the bathroom and one of the bedrooms. The Landlord submitted a copy of this repair, in which the repairs can be clearly seen. The Landlord stated that the wall was not repainted after the drywall repairs were made. The Tenant stated that the wall was touched up with paint that she believes closely resembles the colour of the wall.

The Landlord stated that there were a variety of scratches and marks on the walls and ceiling of the rental unit, photographs of which were submitted in evidence. The Tenant agreed that there were some minor marks on the walls at the end of the tenancy, although she does not recognize all of the marks depicted in the Landlord's photographs.

The Landlord submitted a painting invoice for \$428.00, which he stated he paid to have the entire rental unit repainted.

The Landlord is seeking compensation, in the amount of \$12.00, for replacing a door mat that was missing at the end of the tenancy. The Tenant stated that she believes the mat was mistakenly packed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$21.56, for replacing two sink stoppers. The Landlord stated that the stoppers were missing at the end of the tenancy and the Tenant says they were in the rental unit at the end of the tenancy.

The Tenant stated that she left a variety of items at the rental unit as she was unable to move them prior to returning the key to the rental unit. The Tenant submitted a list of property left behind, which included items such as carpets, empty refundable bottles, paint supplies, planters, food, and a chair. The Tenant estimates the total value of these items, when new, to be \$621.15.

The Landlord stated that he did locate some of the items on the aforementioned list at the end of the tenancy. He stated that he believes he disposed of all of the items left behind as he believed they had been abandoned by the Tenant. The Tenant stated that she has no reason to believe that the Landlord still has any of the items on that list. The Tenant is seeking compensation, in the amount of \$621.15, for replacing the items that the Landlord discarded.

The Tenant is seeking \$30.00 in fuel costs for costs associated with participating in this dispute resolution proceeding.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy, which declared that the tenancy was ending on September 30, 2013; that the Tenant disputed that Notice to End Tenancy; that a dispute resolution hearing into that matter was scheduled for October 09, 2013; and that the Tenant did not inform the Landlord that she had cancelled the hearing on October 09, 2013. I therefore find it was reasonable for the Landlord to conclude that he could not re-rent the rental unit for October 01, 2013, as he would not have had the legal right to possess the unit on that date.

In reaching this conclusion, I placed little weight on the undisputed testimony that on September 14, 2013 or September 15, 2013 the Landlord was told that the Tenant was moving out of the rental. I find that this verbal notification did not grant the Landlord the legal right to possess the rental unit on October 01, 2013, as he had not been properly notified the hearing on October 09, 2013 had been cancelled.

I find that this tenancy ended pursuant to 44(1)(d) of the *Residential Tenancy Act (Act)*, when the Tenant vacated the rental unit. I find that the Tenant vacated the rental unit on September 30, 2013, as declared by the Tenant. I favour the Tenant's testimony over the Landlord's testimony regarding the end date, simply because the Landlord based his testimony on the fact that he observed the Tenant moving property out of the rental unit on September 14, 2013 or September 15, 2013, which does not necessarily mean that the Tenant completed her move on one of those dates. I was also influenced by the undisputed testimony that the keys to the unit were returned on October 02,

2013, which is more consistent with the rental unit being vacated on September 30, 2013.

I find that the Tenant's decision to dispute the One Month Notice to End Tenancy for Cause and then to abandon the application to cancel the Notice, without informing the Landlord, significantly contributed to the Landlord's inability to re-rent the unit for October 01, 2013. I find that the Landlord did not have the right to re-rent the rental unit until the rental unit was vacated on September 30, 2013. I find that it was, therefore, reasonable for the Landlord to delay advertising the rental unit until the unit was vacated or until the merits of the Notice to End Tenancy were determined at the hearing on October 09, 2013.

I find that the actions of the Tenant significantly contributed to the lost revenue the Landlord experienced between October 01, 2013 and October 07, 2013 and I therefore grant the Landlord the claim for lost revenue/unpaid rent, in the amount of \$176.54.

As the Tenant did not dispute that she is obligated to pay \$76.45 of the cable bill submitted in evidence, I find that she must pay this amount to the Landlord.

As the Tenant did not dispute that she is obligated to pay 50% of a pro-rated portion of the hydro bill submitted in evidence, I find that she must pay her portion of this bill. As the Tenant occupied the rental unit for 54/61 of the billing period, I find that she must pay her portion of 54/61 of this bill, which is \$134.46.

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.

I find that the Landlord has submitted insufficient evidence to establish that the interior of rental unit was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photograph of the kitchen that was submitted in evidence by the Landlord. Although there are some items left on the kitchen counter, the photograph demonstrates that the rest of the kitchen is very clean. I note that Landlord submitted no other photographs of the interior of the rental unit that would cause me to conclude that the interior of the rental unit required cleaning.

Section 37(2) of the *Act* only requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy. I find that it would take a minimum of effort to remove the items left on the kitchen counter and I therefore find that the interior of the rental unit was left in reasonably clean condition.

Although the Tenant acknowledged leaving a plastic swimming tube in the yard, I find it would take a minimum of effort to dispose of this item in the curbside garbage service. I therefore find that the yard was left in reasonably clean condition.

While the photographs submitted in evidence by the Landlord do show that there was garbage left outside the house at the end of the tenancy, I find this garbage was piled neatly and simply needed to be taken to the curb on "garbage day". As I find the garbage was neatly piled and would take a minimum of effort to bring to the curbside, I find that the rental unit was left in reasonably clean condition, in spite of this garbage.

As the Landlord has failed to establish that the rental unit was not left in reasonably clean condition, I dismiss the Landlord's claim for compensation for cleaning the rental unit.

I find that the Landlord has submitted insufficient evidence to show that fish waste cannot be discarded through normal curbside garbage service. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates this testimony. In the absence of evidence that shows the Landlord could not dispose of these items through the curbside garbage service, I dismiss the Landlord's claim for the cost of disposing the garbage at the city dumpsite.

I find that the Landlord submitted insufficient evidence to establish that the fish waste was not placed in a bag prior to being discarded in the garbage can. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's statement that the waste was not in a bag or that refutes the Tenant's statement that it was in a bag.

A landlord is entitled to compensation for damage to property only if a tenant damages the property by misuse or neglect. As the Tenant used the garbage can in the manner for which it was intended, I find that the Landlord is not entitled to compensation for the garbage can smelling as a result of garbage being placed in the can. I therefore dismiss the Landlord's claim for the cost of replacing the garbage can.

On the basis of the photographs submitted in evidence by the Landlord, I find that the Tenant damaged the walls in the bedrooms by making several large nail holes above the windows. On the basis of the size of the holes, I find that the Tenant was obligated to repair these holes, as the damage exceeds normal wear and tear.

I find that the holes in the bedroom walls were not repaired at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs submitted in evidence by the Landlord, which show the unrepaired holes, and by the absence of photographs that show the holes were repaired.

On the basis of the undisputed evidence, I find that the Tenant attempted to repair some damage to the wall between the bathroom and bedrooms doors. On the basis of the photograph submitted in evidence by the Landlord, I find that the attempted repairs

were inadequate as they are clearly visible, either because they were not repainted or they were repainted with the wrong colour of paint.

On the basis of the photographs submitted in evidence by the Landlord, I find that there were a variety of minor marks on the walls at the end of the tenancy, which I find to be normal wear and tear. As a tenant is not obligated to repair damage caused by normal wear and tear, I find that the Tenant was not obligated to repair those minor marks.

As the damage to the wall that the Tenant was obligated to repair only requires some small drywall repairs and touch-up paint, I find that the Landlord is not entitled to the claim for painting the entire rental unit. I do award him compensation for a portion of the expense of repainting the rental unit, in the amount of \$150.00, which I find to be reasonable compensation for the cost of the required repairs.

On the basis of the undisputed evidence, I find that a mat that was provided with the rental unit was not left at the rental unit at the end of the tenancy. In addition to establishing that the mat was missing, the Landlord must also accurately establish the cost of replacing the mat. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the mat. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's claim that the mat was worth \$12.00 at the end of the tenancy. I therefore dismiss the Landlord's claim for \$12.00 and I award nominal damages of \$1.00. This award simply serves to acknowledge that the Landlord has suffered a loss and is not intended to compensate the Landlord for his actual loss.

I find that the Landlord submitted insufficient evidence to establish that two sink stoppers were missing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the stoppers were missing or that refutes the Tenant's testimony that they were left in the rental unit. As the burden of proving the loss rests with the Landlord, I dismiss the claim for replacing sink stoppers.

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

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that any items left at the rental unit by the Tenant have been discarded. I therefore dismiss the Tenant's claim for an Order requiring the Landlord to return her personal property, as there is no evidence that he currently possesses property belonging to the Tenant.

Section 24(1) of the Residential Tenancy Regulation stipulates that a landlord may consider that a tenant has abandoned personal property if it is left on residential property after the property has been vacated. On the basis of the Tenant's testimony that she had not removed some of her property by the time she returned the key to the Landlord, I find it reasonable for the Landlord to conclude that the property had been



abandoned. In reaching this determination I was influenced, in part, by the fact that the property on the list provided by the Tenant does not appear to have significant economic value, which would contribute to the belief that the property had been abandoned.

Section 25(2)(a) of the Residential Tenancy Regulation stipulates that a landlord may dispose of abandoned property if the landlord reasonably believes that the property has a total market value of less than \$500.00. "Market value" refers to the value of the items at the end of the tenancy, not the cost of replacing the items. "Market value" is typically determined by how much the items could be sold for in their current condition.

On the basis of the Tenant's estimate that the total value of the items on her list when they were new was \$621.15, I find it reasonable to conclude that the market value of those items at the end of the tenancy was well below \$500.00. In reaching this conclusion I was influenced, in part, by the fact that some of the items, such as food, could not be sold. In reaching this conclusion I was also influenced by my belief that many of the items, such as paint and used carpets, have minimal value on the used market.

As the market value of the items on the Tenant's list is likely less than \$500.00, I find that the Landlord had the right to dispose of any or all items on the list, pursuant to section 25(2)(a) of the Residential Tenancy Regulation.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant only if the tenant suffers a loss as a result of the landlord failing to comply with the legislation. As the Landlord did comply with the legislation in regards to disposing of property left in the rental unit, I find that the Tenant is not entitled to any compensation for losses arising out of her decision to leave property at the unit at the end of the tenancy. I therefore dismiss her claim for compensation for this property.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow either party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for compensation for fuel expenses related to participating in this hearing.

Section 38(1) of the *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 or make an application for dispute resolution claiming against the deposits. 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 he did not file an Application for Dispute Resolution until January 24, 2014. This was more than fifteen days after the tenancy ended on September 30, 2013 and more than fifteen days after he received the Tenant's forwarding address, in writing, in October of 2013.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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 that was paid, which is \$800.00.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$588.45, which is comprised of \$176.54 for lost revenue, \$210.91 in unpaid utilities, \$150.00 in damages, \$1.00 in nominal damages, and \$50.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution.

The Tenant has established a monetary claim, in the amount of \$800.00, which represents double the security deposit.

After offsetting the two claims, I find that the Landlord owes the Tenant \$211.55 and I grant the Tenant a monetary Order for that amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, 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: April 09, 2014

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Residential Tenancy Branch

