



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Horizon Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, MND, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act, compensations for unpaid rent, retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The parties initially attended a hearing held on March 21, 2014. The hearing held on March 21, 2014 was adjourned to allow service and review of evidence. A decision issued by another arbitrator on March 24, 2014 set out instructions for service of documents. The hearing reconvened on May 14, 2014.

Both parties were present at the hearing held on May 14, 2014. The landlords' agent who had attended the initial hearing is not currently working for the landlord but was called into this final hearing as a witness; he remained for the duration of the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. No issues were raised in relation to evidence and service of documents. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to loss of November 2013 rent revenue and unpaid rent?

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

Is the landlord entitled to retain the security deposit?

### Background and Evidence

The tenancy commenced on January 1, 2013; rent was \$2,500.00 due on the 1<sup>st</sup> day of each month. A copy of the tenancy agreement supplied as evidence included a clerical error, showing the tenancy commenced on January 1, 2012. The term was to end effective June 30, 2014.

It was established during the hearing that the tenant moved into the unit prior to Christmas 2012 and that the condition inspection report was completed on December 19, 2012. During the hearing, at the point where it appeared the inspection report did not align with the start of the tenancy, the tenant stated that the signature on the inspection report was not hers. Once the clerical error on the tenancy agreement was discovered, I was able to establish that the tenancy had commenced in 2013, not 2012 and that the inspection report date did properly align with the start of the tenancy. Based on this information I determined that the tenant had in fact signed the inspection report at the start of the tenancy. Her signature matched that on the tenancy agreement.

The condition inspection report was completed on December 19, 2012. The report indicated that blinds would need to be installed. No damage was recorded.

The landlord has made the following claim:

Cleaning	220.50
Garbage removal	200.00
Carpet cleaning	78.75
Replace fridge door	685.62 (reduced from 1,000.00)
Replace patio stone	80.00
Locksmith	78.47
Loss of rent revenue	2,500.00
Patching and paint	336.00
Light bulbs	54.81
<b>TOTAL</b>	<b>\$4,324.15</b>

During the hearing the tenant said she would accept the costs for cleaning, carpet cleaning, locks and light bulbs.

On October 3, 2013 the tenant sent the landlord an email indicating she would vacate. The next day the landlord replied asking if they should attempt to sublet her unit; warning the tenant it was a slow rental season but they would do their best to assist. Text messages sent between November 8 and 13, 2013 show that the landlord was surprised to discover the tenant had vacated. The landlord asked if the unit had been cleaned; the tenant did not reply.

The tenant said that the landlord had asked if she could leave the unit early, as they had someone who was to move into her unit. A person who lived in a different unit in the building was moving into her unit. The tenant submitted that when she vacated on November 8, 2013 it was at the request of the landlord.

At the end of November 2013 the tenant returned the keys to the landlord; the envelope had a forwarding address indicated. The landlord used that address for service and applied for dispute resolution within several days.

The landlord supplied a copy of the tenancy agreement signed with the new tenant; that tenancy document indicated that the tenancy commenced on December 1, 2013.

The landlord said they do not schedule inspections through text messages. A number of telephone messages were left for the tenant, in an attempt to schedule the condition inspection report. The tenant did not respond. A November 20, 2013 email sent to the tenant by the landlord indicated they left several messages and texts, with no response. The landlord said they did not understand why the tenant was ignoring them. The landlord proceeded with the inspection, in the absence of the tenant.

The tenant said she did not receive the messages from the landlord as during this time she had limited access to her phone.

The landlord stated that garbage on the patio, a patio umbrella and "random items" were left at the unit resulting in removal costs. The inspection report did not indicate specific items that had been left in the unit; there was notation that rubbish removal was required. A November 23, 2013 invoice supplied as evidence indicated charges in the sum of \$200.00 for rubbish removal. The landlord supplied forty photographs of the unit. Photos showed a few very small items in one cupboard and a patio umbrella that was left on the patio.

The tenant said that she did not realize the umbrella had been left behind; the tenant said this item was missed. The tenant stated they would not have left rubbish in the unit as there are dumpsters on the property.

The landlord supplied photographs of the front of the refrigerator which showed what appear to be smears across the stainless steel panel. The landlord submitted a March 13, 2014 email from an individual providing an estimate of costs to replace the fridge and freezer outer panels. The panels have not yet been replaced.

The tenant said that the fridge had not been scratched and that the marks are from cleaning product that has not been fully wiped off. The tenant could not see any reason to replace the doors. The landlord confirmed the doors have yet to be replaced.

A photograph was submitted showing that one of the exterior patio stones had broken across one of the corners. The November 23, 2014 invoice included a charge of \$80.00 to replace the patio stone.

The tenant said that she was not sure how the patio stone had cracked but the ground was slightly uneven.

The landlord submitted a number of photographs that showed some damage to walls. Notations on the inspection report indicated that walls needed patching, that there were some gouges in the walls and that screws had been used in the walls. The November 23, 2013 invoice indicated a charge for repair in the sum of \$320.00 for 8 hours of work. The landlord said that the unit was newly built in 2009 or 2010; but that the walls were in very good condition at the start of the tenancy. The landlord said that 2 full walls needed to be painted.

The tenant acknowledged some damage to a wall caused by her garbage can. She said one area of damage was caused by a door; that would hit the wall. The tenant did not dispute the claim that she had used some screws in a wall.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the agreement of the tenant, I find that the landlord is entitled to compensation for cleaning, carpet cleaning, locks and light bulbs; as claimed.

In the absence of any evidence of the need to incur the cost of \$200.00 for garbage removal I find, on the balance of probabilities, that the landlord is entitled to a nominal sum of \$15.00 for the removal of what I find to be the few items left in the unit. There was no detailed accounting of items that had been left on the rental property and the photographs supplied showed only a patio umbrella and several very small items in a cupboard. The balance of the claim for garbage removal is dismissed.

The photographs of the fridge door showed what did appear to be extensive smears on the stainless surface. The damage was disputed and the landlord has the burden of proving that the doors did require replacement. One of the 2 photographs of the fridge indicated that there may have been scratches on the door, but the quality of the photograph made it difficult to discern. Therefore, in the absence of clear evidence of scratches and, in the absence of evidence that the doors have been replaced I find that the claim for the fridge and freezer door replacement is dismissed with leave to reapply. If the landlord proceeds with door replacement and can bring forward evidence of the costs, a claim may proceed. I have come to this conclusion as there may well be damage, but a cost has yet to be incurred or proven.

There is no doubt that the patio stone was not broken at the start of the tenancy. However, there was no evidence before me that the tenant engaged in any negligent act, causing this damage. It is just as likely that the stone was placed on uneven ground and cracked when someone stepped on the corner of the stone. Therefore, I find that the claim for the patio stone replacement is dismissed.

When the tenant ended the tenancy she did so in breach of section 45 of the Act. A fixed term tenancy may only be ended if the landlord has breached a material term of the tenancy; this was not the case. The evidence before me shows that the landlord took steps to assist the tenant in locating a new occupant and did so rather quickly, by re-renting the unit effective December 1, 2013. There was no evidence before me that the landlord had told the tenant to vacate at any time prior to the December 1, 2013 tenancy commencing.

Therefore, as the tenant breached the Act by ending a fixed term tenancy without cause, I find that the landlord is entitled to compensation for unpaid rent to November 8, 2013 and loss of rent revenue from November 9 to November 30, 2013 in the sum of \$2,500.00. The landlord took steps to mitigate a loss that could have been much more significant; in the absence of any apparent effort by the tenant to locate a sublet or new tenant.

From the evidence before me I find that the tenant did leave some walls damaged by the use of screws and the garbage can. From the evidence before me I find that the landlord has shown, on the balance of probabilities that painting was required due to the actions of the tenant. Therefore, I find that the landlord is entitled to the sum claimed, supported by the invoice.

	Claimed	Agreed by tenant	Accepted
Cleaning	220.50	220.50	
Garbage removal	200.00		15.00
Carpet cleaning	78.75	78.75	
Replace fridge door	685.62 (reduced from 1,000.00)		Dismissed with leave
Replace patio stone	80.00		0
Locksmith	78.47	78.47	
Loss of rent revenue	2,500.00		2,500.00
Patching and paint	336.00		336.00
Light bulbs	54.81	54.81	
<b>TOTAL</b>	<b>\$4,324.15</b>	<b>\$432.53</b>	<b>\$2,851.00</b>

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Therefore; the landlord is entitled to compensation in the sum of \$3,333.53. The balance of the claim is dismissed; with the exception of the claim related to the fridge.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,250.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,083.53. 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.

### Conclusion

The landlord is entitled to compensation in the sum of \$3,333.53, by agreement and Order.

The balance of the monetary claim is dismissed; with the exception of the claim related to the fridge.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: May 15, 2014

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Residential Tenancy Branch

