



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MND, MNR, MNSD, MNDC, 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 unit, damage or loss under the Act, unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 31, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant by registered mail. The landlord lives in a small community and discovered where the tenants appeared to be residing. He then used that address for service. Within several days the landlord checked the Canada Post tracking information and determined that the male tenant had signed, accepting both registered mail hearing packages.

Section 71(2) of the Act provides:

*(2) In addition to the authority under subsection (1), the director may make any of the following orders:*

*(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*

***(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;***

*(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

*(Emphasis Added)*

As the male tenant signed, accepting the registered mail, I find that he has been sufficiently served with Notice of this hearing.

I am not confident that the male tenant would have delivered the hearing package to the female respondent, therefore; I determined that the application would be amended to remove that respondent. The landlord did not dispute this decision.

The tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to loss of rent and rent revenue?

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

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on April 24, 2013. Rent was \$700.00 per month, due on the last day of each month. The tenants were to pay utility costs. A security deposit in the sum of \$350.00 was paid. Smoking in the unit was prohibited. A copy of the tenancy agreement was supplied as evidence.

A copy of the April 23, 2013 move-in condition inspection report was supplied as evidence. The report included notations related to some damage in the home; a mark on the kitchen counter, a damaged fridge door, slight wall damage in the living room wall, the fireplace did not work, minor marks on the dining room wall, stained cabinet in bathroom and minor wall damage in the master bedroom.

On September 30, 2013 the landlord issued the tenants a letter indicating they should vacate by October 31, 2013 as they had pets in the unit; contrary to the terms of the tenancy. The tenants chose to accept the end of the tenancy and vacated the unit at the end of October. The landlord did not schedule a move-out condition inspection; that report was completed on November 7, 2013. The landlord was away from the last week in October into November, 2013. A copy of the inspection report was supplied as evidence.

The landlord has made the following claim for compensation:

|  |                   |
|--|-------------------|
| October rent                                   | 100.00            |
| Loss of November rent                          | 700.00            |
| Fortis gas reactivation charge                 | 94.50             |
| Floor tiles                                    | 440.00            |
| Tile glue                                      | 69.44             |
| Replace dead bolt                              | 63.79             |
| Carpet clean rental                            | 69.78             |
| photos   | 28.09             |
| Repair material for gate, new door, baseboards | 138.19            |
| Paint products for ceiling and walls           | 319.50            |
| Cleaning products                              | 7.12              |
| labour   | 2250.00           |
| <b>TOTAL</b>                                   | <b>\$4,280.41</b> |

The tenant paid \$600.00 rent in October 2013; the landlord has claimed the balance owed for that month. A copy of the rent receipt issued on October 2, 2013 in the sum of \$600.00 was supplied as evidence.

Due to the state of the unit at the end of the tenancy it took the landlord 3 weeks to rehabilitate the unit. He was able to locate new tenants effective December 1, 2013.

The landlord has claimed the loss of November 2013 rent revenue as a result of the tenant's failure to clean the unit and leave it free from damage.

The landlord provided evidence that the gas service had been locked by Fortis Gas. A gas bill issued on December 16, 2013 indicated that a fee in the sum of \$94.50 had been levied for a reactivation charge. The tenants had failed to pay the utilities, resulting in the service being locked.

The landlord provided thirty-two photographs showing the state of the rental unit after the tenants vacated. The photos indicate that cleaning did not occur. There was:

- a broken bath towel bar,
- the entire bathroom was visibly dirty;
- the fridge and freezer were left full of food; the kitchen was not clean and dishes had been left in the sink, the microwave was dirty;
- an interior door had a hole in it;
- the yard was littered with garbage and dog dirt;
- an exterior gate to the yard was broken;
- the entry to the home was littered with garbage;
- carpets in the bedrooms were stained and dirty;
- cat dirt on the carpet and flooring;
- appearance of urine on the carpets; and
- garbage left behind.

The condition inspection report reflected the state of the home after the tenants vacated. The landlord determined that the carpeting in the bedrooms and hallway had to be replaced. It appeared the tenants had left their pets in these rooms, resulting in urine stains. The carpets were twelve to fifteen years old, but the landlord believed they had been in good condition as they were good quality and had been cared for. The landlord installed carpet tiles.

The tenants did not return the keys; the dead bolt was replaced.

The landlord rented a carpet cleaner for the remaining carpets in the living and dining room.

The landlord repaired the gate, replaced a damaged interior door and had to purchase baseboards for the rooms where new carpeting was required.

The ceilings had to be painted as the tenants smoked in the unit, resulting in stains to the ceiling. They had not been cleaned. The tenancy agreement prohibited smoking in the unit. There were holes in walls; the landlord patched, primed and painted the walls.

Cleaning products were purchased.

The landlord claimed the cost of photographs used as evidence during the hearing.

The landlord supplied receipts verifying all costs claimed. The receipts were dated between November 13 and 27<sup>th</sup> 2013. The landlord said it took 3 weeks to rehabilitate the home and that he and his wife each spent 75 hours cleaning and repairing. The landlord has charged \$15.00 per hour for the work they had to complete.

### Analysis

Pursuant to section 44(f) of the Act I find that the tenancy ended effective October 31, 2014 when the tenants vacated.

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.

Section 37 of the Act requires a tenant to leave a rental unit reasonably clean, free of damage outside of normal wear and tear. Section 37 also requires tenants to leave the landlord the keys to the unit. From the undisputed evidence before me I find that the tenants did not meet their obligations.

The landlord provided verification of all costs claimed. Copies of invoices and receipts issued between November 13 and 27<sup>th</sup>, 2013 supported the costs claimed.

As the tenants failed to pay the gas bill the company locked the gas meter, resulting in costs to the landlord. Therefore, I find the landlord is entitled to compensation for the sum claimed to unlock the gas service.

In relation to the carpets, I have decreased the sum claimed by applying depreciation to the value over time. I accept the landlord's submission that the carpets had remaining life, but find that carpets of that age that had been well cared for would have depreciated to at least 2/3 of their value. Therefore, I find that the landlord is entitled to \$144.66 for carpet and \$23.15 tile glue. The balance of the claim for carpet and glue is dismissed.

I find that the landlord is entitled to the sum claimed for baseboards as there was no evidence they were damaged at the start of the tenancy and they had to be removed as a result of damage caused by the tenant. The gate and interior door had each been broken; they were in good repair at the start of the tenancy. Therefore, I find the landlord is entitled to the costs claimed for these items.

As the landlord had to paint and clean, I find that the claim for the painting and cleaning supplies are reasonable and that the landlord is entitled to the compensation claimed.

The keys were not returned; therefore, I find that the landlord is entitled to compensation for a new deadbolt.

The landlord's evidence supports the claim for the dining and living room carpet cleaning rental. These carpets were left in a dirty state.

The landlord claimed the cost of photographs. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the

Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

From the evidence before me I find that the amount claimed by the landlord for their labour was reasonable and could have been much higher if the landlord had hired outside help. I find that an hourly rate of \$15.00 is well within a reasonable range. From the evidence before me I have no doubt that the unit required the amount of time spent by the landlord to bring it back up to a standard where it could be rented again. Therefore I find that the landlord is entitled to the sum claimed for the time spent repairing and cleaning the rental unit.

I find that the claim for loss of November 2013 rent revenue is dismissed. The landlord gave the tenants notice to end the tenancy that did not comply with the legislation. A 1 month Notice to end tenancy for cause would have been the appropriate Notice. However, the landlord believed this was sufficient notice and the tenants chose to accept the notice given.

The landlord showed no efforts that any attempt had been made during October to locate new occupants for November 1, 2014. If the landlord had located new occupants and had then been unable to allow them to take possession as a result of the state of the rental unit, a loss might have occurred at that point. The landlord would have been in a position where the new tenants would require compensation while they waited for the home to be readied. This did not occur. As the landlord did not have new tenants arranged, in an attempt to minimize a potential loss of revenue, I find that the claim for loss of revenue is dismissed.

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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$350.00, in partial satisfaction of the monetary claim.

Therefore, the landlord is entitled to the following compensation:

|  | Claimed           | Accepted          |
|--|-------------------|-------------------|
| October rent                                   | 100.00            | 100.00            |
| Loss of November rent                          | 700.00            | 0                 |
| Fortis gas reactivation charge                 | 94.50             | 94.50             |
| Floor tiles                                    | 440.00            | 144.66            |
| Tile glue                                      | 69.44             | 23.14             |
| Replace dead bolt                              | 63.79             | 63.79             |
| Carpet clean rental                            | 69.78             | 69.78             |
| Photos   | 28.09             | 0                 |
| Repair material for gate, new door, baseboards | 138.19            | 138.19            |
| Paint products for ceiling and walls           | 319.50            | 319.50            |
| Cleaning products                              | 7.12              | 7.12              |
| Labour   | 2250.00           | 2250.00           |
| <b>TOTAL</b>                                   | <b>\$4,280.41</b> | <b>\$3,210.68</b> |

The landlord will be retaining the tenant's security deposit in the amount of \$350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance in the sum of \$2,910.68. 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 as set out above. A monetary Order has been issued.

The balance of the claim is dismissed.

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

