



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the security deposit?

### Background and Evidence

The rental unit is a basement suite in a residential house in Port Coquitlam. The tenancy began in July 2009. The monthly rent was \$975.00 plus a portion of utilities. The tenant paid a security deposit of \$537.50 at the start of the tenancy.

The tenant moved out of the rental unit on December 31, 2013. In the application for dispute resolution the landlord claimed payment of the sum of \$1,006.70 made up of the following:

• Utilities owing:	\$330.77
• Carpet Cleaning:	\$126.00
• Repairs Fence / Closet door:	\$450.00
• Bifold door / Light:	\$99.93
 Total:	 \$1,006.70

In a later document the landlord submitted as evidence, he sought to amend his claim; he deducted the claim for payment of a utility charge and made the following claims:

- Carpet cleaning: \$126.00
- Bifold & lights: \$99.93
- Fence repair: \$446.04
- Bifold door install & paint: \$80.00
- 1 bedroom prime / labour: \$70.00
- Tenant interfered in renting unit: \$1,950.00

The landlord testified that the tenant made a comment to a prospective tenant when the rental unit was being shown; according to the landlord the tenant told the prospective renter not to rent the unit. The tenant denied that she made any such comment, or that she made any derogatory remarks when showing the unit.

The landlord claimed an additional amount for painting because the tenant painted bright coloured stripes on one wall the required an extra coat of primer to cover when the rental unit was re-painted. He said that he was charging only for the extra primer and labour, not the full repainting costs.

The landlord testified that during the tenancy one of the tenant's guests struck a fence post with an automobile when pulling out of the drive way. The fence post was cracked. The tenant said this happened in December, 2011. The landlord said that he was prepared to report the damage to ICBC and asked the tenant for the name and address of the driver, but she never provided the information. The landlord testified that he fixed the fence himself after the tenancy ended. He claimed the sum of \$446.04 as set out on an invoice he prepared using a quotation form from the handyman business service that he operates. The landlord claimed for 8 hours of time at \$45.00 per hour plus materials and a gas and delivery charge. He said the post was difficult to replace because it was set into a concrete curb.

The landlord claimed for the cost to replace a bi-fold closet door that he said was removed and discarded by the tenant. He claimed the sum of \$99.93 for the cost of a bifold door and some lights and a further \$80.00 for painting and installing the door. The landlord claimed \$126.00 for carpet cleaning because the tenant failed to have the carpets professionally cleaned at the end of the tenancy and there were areas that were not properly cleaned.

The tenant disputed each of the landlord's claims. She said that the landlord was informed of the broken fence by the neighbour who also had the driver's name. The tenant said that the fence in question is 15 years old and in need of replacement. She noted that the landlord made no effort to repair the fence for more than two years after

the incident. With respect to the bi-fold door the tenant did not agree that she removed it or that it was her responsibility. She said that there was a bi-fold door stored in a shed on the rental property and the landlord himself removed the door and took it to a landfill with other trash.

The tenant said that she had her own carpet cleaner and cleaned the carpets regularly. She said the landlord was aware of this. The tenant said that there were marks on the carpet along the walls in the back bedroom, but they were not due to any deficiency in her carpet cleaning; the marks were mould caused by water leaking down the wall and by a lack of heat. She said the leak persisted for several years until the landlord finally repaired the upstairs deck.

### Analysis

The landlord claimed loss of revenue in the amount of one month's rent. He said the tenant made a remark to a prospective tenant to discourage her from renting the unit. The tenant denied that this event occurred, or that she ever made any remarks to a prospective tenant viewing the rental unit. She said that she cooperated in showing the rental unit. The landlord's allegation is disputed by the tenant; there is no corroboration of the landlord's evidence and no specifics of the incident were provided. This claim is without merit and is dismissed.

The landlord claimed for the cost of replacing a bi-fold closet door. The tenant denied that the door was in place when the tenancy began and said that there was a door stored on the property that the landlord discarded sometime during the tenancy. I find, on a balance of probabilities that the landlord has not proved that the tenant removed the closet door during the tenancy or that she should be responsible for the cost to replace the missing door. This claim is denied.

The landlord claimed payment of the sum of \$126.00 for carpet cleaning. The Residential Tenancy Policy Guideline with respect to landlord and tenant responsibility for residential premises provides as follows:

#### **CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenant testified that the carpets were properly cleaned by her during the tenancy and at the end of the tenancy. She said that marks on the carpet were caused by mould and not her responsibility. The landlord said that the tenant was obliged by the tenancy agreement to have the carpets professionally cleaned. He referred to the invoice from his carpet cleaner who reported that:

These carpets were in need of a good truck mount steam cleaning, dark edges around walls were cleaned by had (sic) with special products, a considerable improvement was achieved

I accept the landlord's evidence that the carpets were in need of additional cleaning at the end of the tenancy and I allow the landlord's claim for carpet cleaning in the amount of \$126.00.

The landlord claimed an amount for painting, consisting of some additional preparation and priming because the tenant painted some strips on a portion of one wall in a bedroom. I accept that some modest extra work may have been required, but based on the photographic evidence referred to by the landlord, which was a picture submitted by the tenant, I regard the landlord's claim for this item to be excessive; I award the landlord the sum of \$25.00 for additional preparation and priming.

The landlord claimed for the cost to remove and replace a fence post damaged by the tenant's guest. The tenant submitted that she should not be responsible for this charge, because the landlord said he would pursue it as an insurance claim and never did so. She noted that the landlord did not deal with the matter for more than two years and only brought the matter up after the tenancy ended.

The tenant is responsible for damage to the rental property that may be caused by her or by her guests. I find that the tenant is responsible for the reasonable cost of the fence repair, subject to a depreciation factor to take into account the age of the fence

and its anticipated lifespan. The Landlord replaced the fence post himself and created an invoice for the repair. The landlord charged for his time at an hourly rate of \$45.00. I consider the hourly rate to be unreasonable and the invoiced amount to be inflated. I consider that a more reasonable amount for the repair would be the sum of \$250.00. I must also take into account the age of the fence and its anticipated life span. The Residential Tenancy Branch Policy guideline with respect to the useful life of building elements provides that a wooden fence has a useful life of 15 years. According to the tenant the fence was 15 years old. The landlord did not challenge that assumption at the hearing, but since the tenancy only began in 2007, I conclude that the tenant's evidence as to the age of the fence is her estimate of the age, based on its condition. Based on the evidence, including the testimony of the parties and the supplied photographs, I find that the fence is nearing the end of its useful life and that only one third of its useful life remains. I therefore conclude that the award to the landlord for the fence post replacement should be subject to a deduction to reflect the depreciated value of the fence. I award the landlord the sum of \$85.00 for the fence repair, to take into account the remaining useful life of the fence which I estimate to be another five years.

### Conclusion

I have allowed the landlord's claim for carpet cleaning in the amount of \$126.00, the claim for primer and painting in the amount \$25.00 and the claim for the fence repair in the amount of \$85.00. All other claims are dismissed without leave to reapply. The total award to the landlord is the sum of \$236.00. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$286.00. The landlord may retain the said sum from the security deposit of \$537.50 that he holds.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the landlord's claim has been allowed in an amount that is less than the amount of the deposit that he holds and all other claims have been dismissed without leave to reapply, it is appropriate that I order the return of the balance of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$251.50. No interest has accrued on the original deposit amount. This order may be registered in the 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: May 16, 2014

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Residential Tenancy Branch

