



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 12, 2014, by the Landlords to obtain a Monetary Order for: damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on January 1, 2013. The Tenant was required to pay rent of \$760.00 on the first of each month and on December 15, 2012 the Tenant paid \$380.00 as the security deposit. During the course of the tenancy the Tenant received permission from the Landlord and painted her bedroom a dark green. The parties

mutually agreed that permission to paint was granted with the condition that the Tenant was required to repaint the bedroom white at the end of her tenancy.

The Landlords testified that the Tenant provided late notice to end her tenancy effective August 31, 2013 and that she was required to repaint the bedroom by that date. They referenced the photos and e-mails provided in their documentary evidence which support their submissions that the room was not re-painted white by August 31, 2013, and the Tenant did not attempt to repaint it until September 14, 2013. They argued that the Tenant attempted to repaint and stopped before completion, leaving spilled paint on the floor.

The Landlords pointed to the Tenant's September 18, 2013 e-mail, provided in their evidence, where she states the following at paragraph two:

*I have tried multiple times to return to the house to paint, and was met with resistance from the current tenants. I will pay the cost of painting the room.*

The Landlords are seeking to recover \$768.57 which is comprised of the first coat being applied on October 23, 2013, by the Landlord at a cost of \$382.17 and a second coat completed on December 3, 2013 by a contractor at a cost of \$386.40.

The Tenant testified and argued that there was no "check out" completed at the end of her tenancy. She stated that she had left the province but returned sometime near the end of August to complete the painting but found that another tenant had moved into her room. She did not know the exact date she first returned to the rental unit but confirmed the first time she attended to paint was on September 14, 2013.

The Tenant clarified her testimony and stated that she had moved all of her possessions out of the room by August 15, 2013, and then left the province. She had not re-painted the room by August 31, 2013 and argued that a new tenant began occupying the room before August 31, 2013.

She stated that there were no damages to the room during her tenancy, the Landlord's photos were photos of her room but were not dated and do not show any damage. She attended the unit only one time, on September 14, 2013, when she attempted to paint but was told she was banned from attending the house.

The Tenant questioned the amount claimed by the Landlords and argued that the amounts were unreasonable and vague. She stated that it was not a coincidence that the amounts total almost the same amount she was awarded for double her deposit, in

a previous hearing. She questioned why the Landlord would charge 8 hours labour at \$40.00 per hour when he was not a professional painter. She also questioned the authenticity of the invoice submitted by an alleged contractor as it does not specify they were professional painters, the amount of time charged, or at what hourly rate. She stated that it was not a big job to paint one bedroom so she did not understand why it had to be painted by two different people.

In closing, the Landlord pointed to his evidence and noted that their photos were dated, September 14, 2013, and December 10, 2013. He confirmed the new tenant was residing in the house, but not the Tenant's room, prior to August 31, 2014, and the Tenant had notified them by text message that she had removed her possessions sometime around mid August 2013.

### Analysis

I have carefully considered the above, all documentary evidence, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Notwithstanding the Tenant's argument that no "check out" was completed and she attempted to re-paint on September 14, 2013, and was later banned from entering the unit, I accept the undisputed evidence that the Tenant's room had not been repainted by August 31, 2013, as was required by the party's mutual agreement.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit painted green after August 31, 2013.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Landlord's submission that the Tenant had agreed to pay to have the unit painted, as written in her September 18, 2013, e-mail. That being said, I accept the Tenant's argument that it is not a mere coincidence that the amounts being claimed in the Landlords' application filed February 12, 2014, are almost equal to the monetary award she was granted in the previous hearing which was held January 27, 2014. I also question the amount of work that was required to be performed and if it resulted from this Tenant's tenancy. I pose that question because the painting invoice and photos submitted by the Landlords are dated over three months after the tenancy ended (December 6<sup>th</sup> and December 10, 2013, respectively); a period when other tenant(s) occupied the room.

Based on the above, I find the amounts claimed for painting the bedroom to be inflated. Accordingly, I award the Landlord costs of \$300.00 for labor plus \$52.17 for supplies (as supported by the receipts provided in evidence) to paint the bedroom; for the total amount of **\$352.17**, in accordance with section 67 of the Act.

The Landlord has partially been successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$377.17 (\$352.17 + \$25.00)**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: June 04, 2014

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Residential Tenancy Branch

