



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0796134 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF  
                             OLC, MNSD, FF

### Introduction

This hearing was convened by way of conference call after a Review Hearing was ordered by the director pursuant to the *Residential Tenancy Act*. A copy of the Decision on Review has been provided which states that this Review Hearing be limited to the landlords' application for compensation with respect to damage to the kitchen sink in the rental unit.

The named landlord attended the hearing and as agent for the landlord company. One of the tenants also attended and each party gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidentiary material filed and the testimony provided.

During the course of the hearing, the tenant objected to the consideration of some evidence that was provided by the landlords to the tenants because it was altered and not identical to the copy provided to the Residential Tenancy Branch. The evidence is a copy of an email exchange between the landlord and a contractor and the landlord advised that the only portion altered on the tenants' copy is a cross-out of the email address of the contractor.

The *Act* requires evidence to be exchanged, and anything that a party wishes to rely on at the hearing must be provided to the other party unaltered unless leave is granted to provide an altered copy. The tenant has opposed inclusion of the evidence, and I am not satisfied what exactly the tenants have received, and I decline to consider that evidence. All other evidence has been reviewed, and the evidence and testimony of the parties is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the kitchen sink in the rental unit?
- Should the landlords be permitted to keep a portion of the security deposit in satisfaction of the claim?

Background and Evidence

A hearing on March 26, 2014 resulted in a written decision dated April 9, 2014 concerning applications filed by both parties. The landlords had applied for an order permitting the landlords to keep the security deposit for damage to the rental unit and to recover the filing fee from the tenants for the cost of the application. The tenants had applied for a monetary order for return of the security deposit and recovery of the filing fee. The decision of the director determined that the landlords had established a monetary claim as against the tenant for damages totalling \$805.00 which includes \$555.00 for damage to the kitchen sink, and made an order permitting the landlords to keep all but \$70.00 of the security deposit in full satisfaction of the claim. A monetary order in favour of the tenants for that amount was awarded.

The tenants applied for a review of that Decision and Order which was considered by the director and on May 23, 2014 ordered that the original hearing be reconvened for the limited purpose of hearing and considering evidence regarding the kitchen sink.

The parties agree that the tenancy began in December, 2012 and ended on December 31, 2013. The landlords had collected a security deposit from the tenants in the amount of \$925.00 at the outset of the tenancy. No move-in or move-out condition inspection reports were completed.

The landlord testified that at the beginning of the tenancy there was no damage to the kitchen sink, and it was about 8 years old at that time. He also testified that the tenants were the 4<sup>th</sup> family to reside in the rental unit since the sink was installed. After the tenancy had ended the landlord found the sink with a hole or dent in it and sharp pieces in the metal that were dangerous. Photographs of the sink have been provided. The landlords have also provided a copy of the invoice for its replacement and installation for \$555.00. The landlord testified that he received an opinion of the contractor

concerning the damage to the sink but that opinion was about possible repair and replacement, not about how the damage may have occurred.

The landlords have provided copies of a series of emails exchanged between the parties from January 2, 2014 to January 7, 2014 wherein the parties disagree on damages and the amount of the security deposit the landlords should return to the tenants.

The tenant stated that the landlord had testified that there are circles with sharp edges on the sink, but the photographs of the sink provided by the landlords were not taken inside the rental unit. The photographs show a sink sitting on concrete or pavement, and the tenant denies that the photographs are of the sink that was in the rental unit.

The tenant further testified that the landlord sent an email to the tenant on January 2, 2014 stating that the landlord had finished the inspection. He stated that the previous Decision states that the landlord is familiar with the property, and yet there is nothing in the landlord's email about the sink or in the landlords' application for dispute resolution. The landlords' application states that damage was related to carpet.

The tenant also testified that he is an accountant, and pointed out that the invoice provided by the landlords is not complete in that it shows no taxes, does not show a job address, and has not been added up.

The tenants provided 3 statements of witnesses in support of the application for review and testified that those letters were notarized. However, one of the letters is witnessed and declared before a notary public. All three letters state that the writers witnessed the kitchen sink in the rental unit on the 30<sup>th</sup> and 31<sup>st</sup> of December, 2013 while assisting the tenant with moving out, and that the sink was in good condition. Two of the letters are dated April 20, 2014 and the other is dated April 16, 2014.

The tenants also claim recovery of the filing fee and testified that in order to claim the security deposit they had to file a counterclaim against the landlords' claim.

### Analysis

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;

2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the landlords have provided photographs of a sink that depict some sort of damage and the landlord testified that they illustrate the damage which includes sharp portions that are dangerous, and I am satisfied that the photographs show some damage. The tenant pointed out that the photographs are not taken inside the rental unit, but outside on pavement or concrete, and I find that to be the case. The tenant denies that the sink in the rental unit was damaged at all and has provided 3 witness statements in support of that, one of which has been declared and witnessed before a notary public, and all state that they saw the sink on the 30<sup>th</sup> or 31<sup>st</sup> of December, 2013, or both, and the sink was in good condition.

The *Act* places the onus on a landlord to ensure that move-in and move-out condition inspection reports are completed and states that the reports are evidence of the condition of the rental unit. The landlords did not cause either of those reports to take place. The tenant pointed out that the landlords' application for dispute resolution doesn't mention the sink, but only carpets. He further pointed out that the landlord sent an email on January 2 saying that he had finished an inspection, and nothing in the email mentions damage to the sink. I have reviewed the emails and other evidentiary material, and I find that the kitchen sink wasn't mentioned in any documentation and not until the first hearing. I find that the landlords made a claim for damage to the carpets and then continually added to the claim.

In the circumstances, I am not satisfied that the landlords have established that the tenants damaged the sink, nor am I satisfied that the landlords have established that the sink in the photographs is the sink that was in the rental unit during the tenancy. Therefore, I find that the landlords have failed to establish element 1 in the test for damages.

I further accept the testimony of the tenant that the receipt provided by the landlords is not complete. I find that he is correct; it contains no address of the work, it has no taxes or a total of the bill. Where there is a question, which has been raised by the tenant, the onus is on the landlords to provide the evidence. I have no testimony explaining why there isn't a completed receipt, and therefore, I find that the landlords have failed to establish element 3 in the test for damages.

The *Residential Tenancy Act* states that after a review of a Decision or Order, I may confirm, vary or set aside the original Decision and/or Order. Having found that the

landlords have failed to establish elements 1 and 3 in the test for damages, I hereby set aside the monetary order which was made on April 9, 2014 in favour of the tenants in the amount of \$70.00, and I hereby grant a monetary order in favour of the tenants as against the landlords in the amount of \$675.00, consisting of the \$70.00 as previously awarded, \$555.00 that was previously ordered to be taken from the security deposit for damage to the kitchen sink, and recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby set aside the Order of the director dated April 9, 2014 and I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$675.00.

This order is final and binding and may be enforced.

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: August 07, 2014

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Residential Tenancy Branch

