



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: MNSD; FF

Landlord's application: MND; FF

### **Introduction**

This Hearing was convened to consider cross applications. On April 4, 2014, the Tenant filed an Application for Dispute Resolution seeking return of the security deposit; and to recover the cost of the filing fee from the Landlord. On April 8, 2014, the Tenant amended her Application for Dispute Resolution to include return of the last month's rent.

On July 9, 2014, the Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with her Notice of Hearing documents including her amended Application for Dispute Resolution by registered mail. The Tenant was not certain when she mailed the documents, but the Landlord acknowledged receiving them sometime in April, 2014. The Tenant did not provide the Landlord with copies of her documentary evidence and therefore her documentary evidence was not considered. I invited the Tenant to provide me her oral testimony with respect to her evidence.

It was determined that the Landlord served the Tenant with her Notice of Hearing documents and copies of her documentary evidence by leaving them with the Tenant at her new address on July 9, 2014.

### **Issues to be Decided**

1. Is the Landlord entitled to a monetary award for damage to the rental unit?
2. Is the Tenant entitled to a monetary award for double the amount of the security deposit?

### **Background and Evidence**

The rental unit is one of 16 townhouses in the rental property, built in the 1970s. This tenancy began on October 1, 2009. The Tenant paid a security deposit in the amount of \$312.50 at the beginning of the tenancy. At the end of the tenancy, monthly rent was \$690.00.

#### **The Tenant gave the following testimony:**

The Tenant stated that she did not give the Landlord permission to retain any of the security deposit and that the Landlord has not returned any of it.

The Tenant testified that she provided the Landlord with her forwarding address in writing on September 17, 2013, when she gave notice to end the tenancy. The Tenant paid rent for the month of October, 2013, but moved “most of my things” out of the rental unit on October 1, 2013. The Tenant stated that she moved out the “big furniture” on October 1, 2013, but there was “still some stuff” in the house.

The Tenant testified that she returned to the rental unit occasionally after she had moved out, because she wished to stay there overnight. She stated that around the middle of October, she went to the rental unit to stay overnight, and found that “someone had broken in”. The Tenant stated that all the cupboards, the sink and the toilet were gone and there was construction garbage in the rental unit. The Tenant seeks return of October’s rent because she did not have use of the rental unit for October, due to the Landlord’s actions.

The Tenant seeks a monetary award, calculated as follows:

Double the security deposit	\$625.00
Return of October’s rent	<u>\$690.00</u>
TOTAL	<b>\$1,250.00 (sic)</b>

#### **The Landlord gave the following testimony:**

The Landlord testified that the Tenant gave her notice to end the tenancy on September 19, 2013. The Landlord acknowledged that the Tenant’s notice included her forwarding address.

The Landlord acknowledged that the Tenant paid full rent for the month of October, 2013, but stated that she didn’t think there was anything wrong with taking possession

of the rental unit on October 15<sup>th</sup> because the Tenant indicated that she would be out of the rental unit by then. The Landlord stated that the Tenant used the kitchen counters as butcher blocks and that the bathtub was so dirty that it couldn't be cleaned. The Landlord testified that she lost a month of rent because of the Tenant's mess.

The Landlord stated that she was away in Nepal until November and that she met with the Tenant at the rental unit for the move-out inspection on November 11, 2013. The Landlord testified that the Tenant refused to sign the Condition Inspection Report, a copy of which was provided in evidence.

The Landlord testified that the stove was so dirty that she scrubbed for two hours and it wouldn't come clean so she had to buy a new stove. She stated that the Tenant's child drew on the walls, so it took extra prep time to paint the walls. The Landlord testified that the Tenant ruined the blinds.

The Landlord denied that the fixtures and appliances were the original ones. She said that she was not sure how old the counter tops were, but that they were there when she purchased the property 11.5 years ago and that they were in good shape when the Tenant moved in. The Landlord was not sure how old the stove was but stated that the blinds were new 5 years ago.

The Landlord testified that the Tenant did not clean the rental unit and left garbage in the rental unit.

The Landlord seeks a monetary award against the Tenant, calculated as follows:

Cost to replace damaged countertops	\$915.25
Cost for new stove	\$391.00
Labour for cleaning and to prep walls for painting (8 hours @25.00)	\$200.00
Replace damaged blinds with two drapes	<u>\$100.00</u>
TOTAL claim	\$1,607.25

The Landlord provided copies of invoices and some photographs of the rental unit in evidence.

The Tenant gave the following reply:

The Tenant testified that a neighbour told her that when the Tenant moved into the rental unit all of the appliances and kitchen and bathroom fixtures were the originals from 1970. The Tenant stated that the Landlord was trying to get her to pay for renovating the rental unit. The Tenant testified that she and a friend started cleaning

the rental unit and that she still had some cleaning to do, but the Landlord's husband took back possession of the rental unit and started renovating before she could finish cleaning.

The Tenant testified that the stove that she was provided at the beginning of the tenancy was dangerous and that the oven did not work when she tried to cook a turkey. She stated that her daughter was shocked by sparks coming from the element when she tried to cook an egg. The Tenant stated that she told the Landlord, who moved in another old stove from another unit. The Tenant testified that the kitchen sink leaked, causing the counters to rot over time. The Tenant stated that the blinds in the bedroom were new when she moved in, but the other blinds were old. The Tenant referred to the 2<sup>nd</sup> page of the move-in Condition Inspection Report. The Tenant agreed that her son drew on the walls. The Tenant questioned when the Landlord's photos were taken. She believes the pictures were taken before she did any cleaning.

### **Analysis**

Is the Tenant entitled to a monetary award for double the amount of the security deposit and compensation from the Landlord for overpayment of rent?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

A move-out Condition Inspection Report is required to be done at the end of the tenancy, when the rental unit is empty. Either party may nominate an agent to attend the move-out condition inspection. The Tenant paid full rent for the month of October, 2013, and I find that the tenancy ended on October 31, 2013. In this case, the Landlord agreed that her husband began to make repairs at the rental unit before the end of the tenancy.

The Landlord stated that she did not see any harm in starting to do repairs in mid-October, because the Tenant had moved out. I accept the Tenant's testimony that she had not completely moved out and that she was not finished cleaning the rental unit when the Landlord's husband started repairs. Furthermore, I do not find that the Tenant gave up her right to claim against the security deposit; rather, I find that the Landlord extinguished her right to claim against the security deposit by not completing the Condition Inspection Report at the end of the tenancy and before beginning repairs.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to double the amount of the security deposit in the amount of **\$625.00**. I also find that the Landlord had no right to take back possession of the rental unit before October 31, 2013. Therefore, I also allow the Tenant's claim for that portion of her application in the amount of **\$378.39** (return of rent paid from October 15 to 31, 2013 = \$690/31 days x 17 days).

The Tenant claimed reimbursement of the cost of the filing fee; however, there is no indication that the Tenant paid a filing fee. This portion of her claim is **dismissed**.

I find that the Tenant has established a monetary award in the total amount of **\$1,003.39**.

Is the Landlord entitled to a monetary award for damage to the rental unit?

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act or agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Condition Inspection Reports must be completed at the beginning and the end of a tenancy. The onus is on the Landlord to arrange for the Condition Inspections to take place. Section 21 of the regulation provides that a Condition Inspection Report, completed in accordance with Part 3 of the regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary.

In this case, I find that the Landlord's documentary evidence is not sufficient to prove that the rental unit was damaged by the Tenant, with the exception of the marked walls. Regarding the walls, the Tenant admitted that her son had drawn on them, but testified that she had not finished cleaning before the Landlord's husband took back possession of the rental unit.

The Landlord was not certain how old the stove was. Appliances depreciate in value. The Residential Tenancy Branch Policy Guidelines stipulate that a stove has a life of 10 years. Therefore, any award given would be adjusted accordingly to account for depreciation. I find that the Landlord did not provide sufficient evidence to support her claim that the Tenant was responsible for causing damage, or the worth of any damage, and therefore, **the Landlord's claim is dismissed without leave to reapply.**

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,003.39** for service upon the Landlord. This Order may be filed in the Provincial Court 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: August 18, 2014

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Residential Tenancy Branch

