



# Dispute Resolution Services

Page: 1

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 landlords' application for a monetary order and an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlords and the tenants called in and participated in the hearing and I heard evidence from the tenants' named witness.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award and if so, in what amount?  
Are the landlords entitled to retain the security and pet deposits or some portion of them?

### Background and Evidence

The rental unit is a basement suite in the landlords' house in Coquitlam. The tenancy began in June, 2008. The monthly rent was \$1,100.00 and the tenants paid a security deposit of \$550.00 and a pet deposit of \$550.00 at the start of the tenancy. I was not provided with a full copy of the tenancy agreement, but the parties acknowledged that the tenants were responsible for paying 25% of the utilities.

The tenancy ended on February 25, 2014. The landlords claimed that the tenants damaged the rental unit, failed to return the keys, left garbage behind and failed to pay amounts that were due for utilities. In the application for dispute resolution the landlords claimed payment of the sum of \$2,462.94 made up of the following amounts:

- Residential Tenancy Branch filing fee for application: \$50.00
- Courier costs to deliver final notice for condition inspection: \$30.40
- Locksmith charge to open door: \$140.00
- Charge for locks and keys: \$40.00

• Charge to change mailbox locks:	\$29.00
• Garbage removal:	\$140.00
• Wall repairs and painting:	\$1,000.00
• Rent for four days due to lack of keys:	\$157.16
• Cost to provide pictures:	\$22.98
• Amount claimed for electricity utility charges:	\$853.40

Total:	\$2,462.94
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The landlords testified that the tenants left the rental unit without removing all of their garbage and belongings. The landlord testified that they were unable to get into the rental unit because the tenants changed the locks to the unit without giving the landlord a copy of the key. The tenants failed to attend a scheduled final inspection on February 27<sup>th</sup> and the landlord did not receive the keys back until March 3<sup>rd</sup> when they arrived by mail. The landlord said that he had to hire a locksmith open the rental unit on Sunday, March 1<sup>st</sup>.

The landlords said that the rental unit walls had excessive nail holes and drywall damage with nails and screws left in the walls. The landlord said that he obtained several estimates to repair and repaint; the lowest estimate was for the sum of \$1,000.00. The landlord testified that the tenants damaged the bathroom; they said the soap dish in the bathroom was ripped off the wall along with the tile it was attached to.

The landlord complained that the rental unit was not properly cleaned. The stove in particular was not cleaned; there was grease and burned food under the elements and the oven was not properly cleaned. The landlords said that the stove required over an hour of cleaning. The landlords submitted a large quantity of photographs of the rental unit and a copy of a condition inspection that they completed without the tenants' participation. The landlords said they have not repaired or painted the rental unit because a new tenant moved in the work will have to be done later.

The landlords said that the tenant owed them \$853.40 for Hydro charges. The landlord said that the amount claimed includes late charges that the tenants should have to pay. The landlords did not provide copies of the Hydro invoices; they said that they did not provide copies of the bills because they were told by BC Hydro that the bills contained private and confidential information and they should not be given to the tenants.

The tenants addressed the landlord's claims for electricity charges. They said that they were responsible for 25% of the Hydro account and had paid the amounts requested by

the landlords, but they have not been given copies of the Hydro bill for more than two years. They said they made payments without proof of billing. The tenants said that the amounts the landlords were claiming for Hydro increased substantially after 2010 when they were last shown copies of the bills, causing the tenants to become concerned that they were being overcharged. They said when they asked to see copies of the bills the landlords became hostile and evasive, first saying they were with the accountant and later that they would not provide them because they contain personal information. The tenants eventually took the position that they would not pay any more amounts for Hydro without provision of the accounts as proof of the amounts that were due. The landlords have consistently refused to provide them, even with supposedly personal account information blocked out.

The tenants said that On January 23<sup>rd</sup> the landlord tried to get the tenant to sign an agreement as to the amount owed for the hydro account and permission to deduct it from the tenants' security and pet deposits. The tenants said they needed to see the proper month to month billing from January, 2012 before they would agree to pay any particular amount. The tenant said that on February 25<sup>th</sup> when the tenant was finishing moving out with the help of his sister, the landlords came to the rental unit and demanded that he sign a document agreeing to have the amount of \$980.00 for Hydro deducted from the tenants' damage deposit. He said that the landlords were yelling at him and bullying him to sign the document. He testified that they told him he could not leave until he signed the document. He said they also told him that if he did not sign they would go over the rental unit "with a fine tooth comb" to find every imperfection to claim for. The tenant said that he finally caved into the landlords' relentless pressure and signed the document. He was not given a copy of the document. The tenant's sister testified that she was present on February 25<sup>th</sup> and heard the landlords yelling at him to sign the paper. The tenants said that they did not return to the rental unit after this confrontation because they felt threatened by the landlords and because the female tenant was in her eighth month of pregnancy and could not cope with further contact with the landlords. They said that there was no move-in inspection performed and therefore did not consider that a move out condition inspection would be useful. The tenants said they left some items behind because the new tenant said she wanted them and other items they did not return to pick up because of the conflict with the landlords.

With respect to the keys to the rental unit, the tenants said that after there was a break-in to the landlord's portion of the house, the tenant requested permission to change the locks to the rental unit and the landlords consented and paid for the lock change. The tenants said they gave a key to the landlord for a two week period so the landlords could make their own copy and they assumed the landlords had done so. When the tenants received a letter from the landlord requesting keys and demanding that they

attend a final inspection, the tenants sent the keys to the landlord by Canada Post next day delivery. This was done on February 27<sup>th</sup>, but the keys were not delivered until March 3<sup>rd</sup>.

The tenants said they left the rental unit in clean condition, but they said the unit had been lived in before they moved in and it was not clean and had some wear before they moved in. The tenants said that they considered any defects to the rental unit at the end of the tenancy to constitute normal wear and tear. The tenants said that the tile with the soap dish came off the wall because the grout allowed water to get in. The tenants said that they asked the landlord to repair it during the tenancy, but he told the tenants it was their responsibility.

The landlords denied being told about the soap dish and said that they would have fixed it immediately had they been told. The landlords testified that the rental property was in as new condition when the tenancy started and there were absolutely no defects to the rental unit when the tenants moved in. The landlords denied intimidating or yelling at the tenant to get him to sign the agreement to deduct Hydro from the deposits.

### Analysis

The landlords have brought this claim for compensation and they bear the burden of proving each of the amounts that make up their claim, on a balance of probabilities. The parties agree that the tenants were responsible for 25% of the electricity bills. The landlord has not provided those bills to the tenants or to the Residential Tenancy Branch, citing privacy concerns. I find that the landlords have failed to prove that they are entitled to payment of amounts for Hydro in the amount claimed, or in any amount, in the absence of proof in the form of accounts. I find that the tenants were entitled to see and verify the invoices before they could be required to pay their portion of the bills. The landlord did not submit a copy of the document said to have been signed by the tenant authorizing the deduction of \$980.00 from the security deposits on account of the Hydro account, but in any event, I find that the tenant was coerced into signing the agreement and the document was signed under duress without provision of the accounts that the tenant had consistently demanded to see. The tenants wrote to the landlord on February 27<sup>th</sup> and I find effectively revoked their consent to a deduction from the security and pet deposits for Hydro.

With respect to the remainder of the landlord's claims, I find that the tenants failed to return the keys at the end of the tenancy and the landlords are entitled to recover locksmith charges as claimed, in the amount of \$140.00 for locksmith charges and \$40.00 for locks and keys. I do not allow the claim for the cost to replace mailbox keys

because there is insufficient evidence to suggest that the tenants constitute some form of security threat that would justify charging them for replacing the mailbox keys. If the landlords chose to replace the mailbox keys, then it should be at their own expense.

With respect to the claim for lost rental income for four days, the landlords obtained access to the rental unit on March 1<sup>st</sup> and they have been awarded locksmith and lock and key replacement charges; the landlords were not out of possession of the rental unit for four days and they have not provided any documentary evidence to show that they suffered a loss of rental income in any amount. The claim for loss of rent for four days is denied.

I accept the landlord's evidence that the tenants did not fully clean the rental unit and left some garbage and some other belongings behind that had to be disposed of. I allow the claim for garbage removal in the amount of \$140.00.

The landlord claimed the sum of \$1,000.00 for re-painting, based on an e-mail estimate. The landlord's photographs show that there was some drywall and paint damage and re-painting of the unit will be necessary. Based on the length of the tenancy, which began in 2008, I find that some of the paint damage constitutes normal wear and tear and after a tenancy of more than five years duration, the tenants should not bear the full cost of re-painting. I award the landlord \$250.00 for a portion of the patching and re-painting costs that I find exceed normal wear and tear. The landlords are not entitled to recover courier charges or expenses for obtaining photographs; these are not recoverable expenses and these claims are denied.

### Conclusion

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The total amount awarded to the landlords is the sum of \$570.00 and all other claims by the landlords are dismissed without leave to reapply. The landlords are entitled to recover the \$50.00 filing fee for their application for a total award of \$620.00 and I order that they retain the said sum from the security and pet deposits of \$1,100.00 that they hold.

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 landlords requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been allowed in an amount that is less than the amount of the deposits and the remainder of the landlords' claims has been dismissed without leave to reapply, it is appropriate that I order the return of the balance of the tenants' security and pet deposits and accrued interest. The interest that has accrued amounts to \$9.51; I grant the tenants a monetary order in the amount of \$489.51, being the balance of the deposits and interest after deducting the award to the landlords. 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: July 15, 2014

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Residential Tenancy Branch

