



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR, MNSD

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Both sides presented considerable evidence in the form of photographs, documents etc. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside on June 3, 2014.

The landlord's Application did not sufficiently identify his claims. On request the landlord stated he was made the following claims:

- a. Repair washing machine - \$60 inspection plus \$150 to \$200 for parts
- b. Carpet cleaning - \$70 to \$90
- c. Late Notice – loss of rent for June 2014 – \$750
- d. Scratches, scuff marks on wall, window sill etc. - \$100 to \$200

The agent for the tenant advised that the tenants have filed an Application for Dispute Resolution that seeks a monetary order against the landlord in the sum of \$4500 which is scheduled to be heard on October 7, 2014. I advised the parties that as the tenants

had not yet served that claim on the landlord that I would not be considering the tenants' claim in this hearing.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet damage deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement dated March 23, 2012 that provided that the tenancy would start on March 1, 2012, continue for a fixed term on one year and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$750 per month payable on the first day of each month. The tenants paid a security deposit of \$400 and a pet damage deposit of \$400 at the start of the tenancy.

A dispute arose between the parties as to who was responsible to repair the washing machine and stove.

On April 16, 2014 the landlord faxed a Mutual Agreement to End Tenancy to the tenant signed by the landlord which provided the tenancy would end on May 31, 2014. The tenant's agent responded by e-mail as follows: "Received your document dated April 16, 2014." "Mutual Agreement to End Tenancy" this is not acceptable to us. You will have to give formal written notice to us with cause as to why the lease is being terminated by you. All of which will be forwarded to the rental control at the BC government."

On May 24, 2014 the tenants' agent scanned a signed copy of the Mutual Agreement to End Tenancy and advised the tenants would be vacating on May 31, 2014. The tenancy ended on that date.

### Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord has the burden of proof to present sufficient evidence to establish the respondents were liable on a balance of probabilities. The landlord alleged the tenant failed to properly use the washing machine by overloading it. The tenants deny they were negligent. After considering all of the disputed evidence I determined the landlord failed to present sufficient evidence to prove this allegation. The landlord sufficient evidence (including expert evidence) as to the cause of the problems. The landlord failed to make the repairs and it has more than 2 ½ months since the tenant vacated. The washing machine is 8 years old. While the Policy Guidelines provide that a washing machine has a 15 year life span this does not mean that an owner will not be making any repairs to the

machine during that period. I determined the landlord failed to prove the tenant(s) were negligent in the use of the washing machine and as a result this claim is dismissed.

- b. The landlord claimed the sum of \$70 to \$90 for the cost of carpet cleaning. The tenants testified they shampooed the carpets and that all that was left to do was to vacuum it. However, I am satisfied based on the video evidence that the shampooing was not satisfactory and the landlord is entitled to \$70 for this claim.
- c. I determined the landlord has established a claim in the sum of \$750 for loss of rent for June 2014. The landlord sent the tenants a Mutual Agreement to End the Tenancy for May 31, 2014. This is an offer. The tenants rejected that offer as evidenced by their e-mail at the end of April 2014. In my view the e-mail by the tenants on May 24, 2014 purporting to accept the Mutual Agreement to End the Tenancy is not valid. The tenants cannot accept an offer at a later date which they have previously rejected.

Thus the e-mail to the landlord on May 24, 2014 was the tenants' notice to end the tenancy . The Residential Tenancy Act requires that with a month to month tenancy the tenant must give a clear month notice on or before the end of the rental payment period to be effective at the end of the ensuing rental payment period. The notice given by the tenant was not sufficient. I determined the landlord sufficiently attempted to mitigate his loss but he was not able to rent the rental unit for June 2014. The landlord is entitled to recover one month loss of rent.

The agent for the tenant testified the landlord was dealing with the tenants and him and there was confusion as to who was giving notice. I do not accept this submission as a defense for the landlord's claim. The e-mail in

late April was from the tenants' agent and it clearly rejects the Mutual Agreement to End tenancy. The tenants must give proper notice as required by the Residential Tenancy Act to end the tenancy. The landlord is entitled to this claim.

- d. The landlord claimed \$100 to \$200 for the cost of painting walls and window sills. This work has not been done. However, the tenant had requested the landlord paint the walls and window sills when she took possession and the landlord failed to do so. It is impossible to determine what damage pre-existed the tenancy and what was caused by the tenant's cat. Further, the landlord failed to prove that the damage caused by the tenant and her cat will increase the cost of painting which the landlord stated he would do when the tenant took possession. As a result I dismissed this claim.

**In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$820 plus the \$50 filing fee for a total of \$870.**

#### Security Deposit

I determined the security deposit/pet damage deposit totals the sum of \$800. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$70.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The representative of the tenant stated the tenants have claims against the landlord that exceed \$4500. Thus claims will have to be heard by an arbitrator to determine the merits. The representative of the tenant advised the hearing is set for October 7, 2014.

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 15, 2014

---

Residential Tenancy Branch

