



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rancho Management Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit, a monetary order for recovery of costs for damage to the rental unit, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenants confirmed receiving the landlord's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

### Background and Evidence

The landlord submitted that this tenancy began in June 2011, ended at the end of April 2014, monthly rent was \$1250, and the tenants paid a security deposit of \$625 at the beginning of the tenancy. The security deposit has not been returned.

The tenants submitted that the tenancy began in May 2011, and that the keys were returned on May 1, 2014.

The rental unit is in a condominium building, run by a strata corporation.

The landlord's monetary claim is \$1200.81, comprised of \$748.16 for alleged damage to another unit in the condo building, \$202.26 for hallway damage, \$200 for cleaning, and the filing fee of \$50 paid for this application.

The landlord's relevant documentary evidence included, but was not limited to, a letter from the strata corporation, a receipt for re-tiling the bathtub unit in the rental unit, a condition inspection report, a receipt for bathroom repairs, a statement of account from the strata corporation, and a faint copy of a photo of the bathtub tiles in question.

In support of their application, the landlord submitted that the tenants' negligence caused damage to the unit below the rental unit and in the hallway. In explanation, the tenant submitted further that the caulking around some of the tiles in the shower in the rental unit had apparently worn off, which caused water to leak behind the tiles, resulting in water damage to the other unit and hallway damage. The landlord submitted that the tenants should have noticed the missing caulking and notified the landlord in order to avoid the water damage.

The landlord submitted that the strata corporation has assigned the damage repair to the owner's account.

The landlord confirmed that he did not know the age of the bathroom tiles or caulking or when the leak actually occurred.

#### *Tenants' response-*

The tenants submitted that the tiles and caulking were original with the rental unit, which was built in 1991.

The tenants submitted further that they had informed the landlord at least twice that there were issues with the shower and tile, and that the property manager said the tiles needed replacing. The tenants submitted further that the building itself had many issues with leaks.

The tenants denied knowing that the tile issue would cause a water leak and that they were not responsible for missing grout.

#### Analysis

Residential Tenancy Branch Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

## Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

Damage to a landlord's property or other losses are not the responsibility of the tenants unless the tenants have been negligent in the duty owed to the landlord or have breached the Act.

In light of the above, it is upon the landlord to show that the missing tile grout resulting in water damage to the unit below or the hallway was a result of the tenants' negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the landlord has shown that the tenants acted unreasonably.

I have considered the submissions of both parties and I find that the landlord has submitted insufficient evidence to show that the tenants breached their duty of care. In a case where the tile and caulking were 23 years of age, as is the case here, I would expect the landlord to perform routine inspections to ensure the integrity of the caulking, and in this case, I find that they did not.

I also considered and accept that the tenants submitted that they had informed the landlord of issues with the shower, with no action by the landlord.

Given my findings above, I do not find the landlord has proven negligence on the part of the tenants and I find that they are not entitled to compensation for water or flood damage as claimed.

I further find that the landlord submitted insufficient evidence to prove that the tenants left the rental unit in a state other than reasonably clean, less reasonable wear and tear.

Due to the above, I dismiss the landlord's claim for water damage and cleaning, along with their request to recover the filing fee.

As I have dismissed the landlord's application for monetary compensation and their claim against the tenants' security deposit, I order the landlord to return the tenants' security deposit of \$625, forthwith.

Pursuant to section 67 of the Act, I award the tenants a monetary order in the amount of \$625, which is enclosed with the tenants' Decision.

Conclusion

The landlord's application to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee is dismissed.

The tenants are granted a monetary order for the amount of \$625, which is the amount of their security deposit.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: September 22, 2014

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Residential Tenancy Branch

