



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MND; MNDC; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid utilities and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Tenant the Notice of Hearing documents and copies of her documentary evidence to the forwarding address he provided on June 3, 2014, by registered mail, on June 18, 2014. The Landlord provided a copy of the registered mail receipt and tracking number. The Tenant acknowledged service of the documents.

The Tenant testified that he posted copies of his documentary to the Landlord's door on October 9, 2014. The Landlord stated that she was away and did not receive the Tenant's documents until October 14, 2014. Nevertheless, the Landlord stated that she did not want to adjourn the matter and wished to proceed with the Hearing.

### **Issues to be Decided**

- Is the Landlord entitled to compensation for loss of revenue for the month of June, 2014, for the cost of cleaning and repairs to the rental unit, unpaid utilities and late charges?
- May the Landlord apply the security deposit towards partial satisfaction of her monetary award?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy was a fixed term tenancy, beginning on May 1, 2013, and ending on March 31, 2014. At the end of the fixed term, the tenancy continued on a month-to-month basis. Monthly rent was

\$1,500.00, due on the first day of each month. The Tenant was required to pay 75% of the utilities, including water, oil and hydro. The Tenant paid a security deposit in the amount of \$750.00 on April 29, 2013. The Tenant had a pet rabbit, but did not pay a pet damage deposit.

On March 30, 2014, the Tenant gave written notice to end the tenancy effective May 1, 2014. The Tenant moved out on May 1, 2014.

A move-in Condition Inspection Report was provided in evidence. One of the Tenant's co-tenants was present for the inspection on May 1, 2013, and signed the Report indicating that he agreed with the condition of the rental unit on that day.

The Landlord gave the following testimony:

The Landlord testified that she started trying to re-rent the rental unit after she received the Tenant's notice to end the tenancy, but the carpet was in such bad shape that prospective renters were put off. She stated that she asked the Tenant and his co-tenants to move the furniture in the living room and dining room so the carpet could be cleaned. The Landlord had the living room, dining room and 6 stairs cleaned on April 3, 2014, at a cost of \$124.52. The Landlord provided a copy of the invoice in evidence.

The Landlord testified that the Tenant and his co-tenants refused to remove their work boots when entering the rental unit, which heavily soiled the carpet. She stated that the Tenant did not clean the carpets at the end of the tenancy and the Landlord paid to have the carpeted areas (including 3 bedrooms and a hallway) cleaned before she could re-rent it, at a cost of \$147.32. A copy of that invoice was also provided in evidence.

The Landlord testified that the rental unit was very dirty at the end of the tenancy. She stated that she spent 6 hours doing general cleaning and 4 hours washing walls. The Landlord testified that the Tenant's guests smoked in the rental unit, contrary to a term in the tenancy agreement. The Landlord stated that the walls and doors required repairs and repainting, from holes in the walls and doors to missing paint on the doors. The Landlord stated that blinds were damaged and a door chime was missing. She stated that 3 countertop tiles and 4 floor tiles were damaged and had to be replaced. The Landlord provided photographs and receipts in evidence.

The Landlord testified that she had difficulty arranging a time to do a move-out condition inspection with the Tenant and that on April 17, 2014, she provided him with a Notice of Final Opportunity for 5:30 p.m. April 30, 2014. A copy of the Notice was provided in evidence. The Landlord stated that on April 30, 2014, at 4:30 p.m., one of the Tenant's

co-tenants called her and agreed to meet at 6:00 p.m. When the Landlord arrived at the rental unit on April 30, 2014, the Tenant and the co-tenants had not even started moving. They told her that they would not be out until May 1, 2014. The Landlord stated that she had potential tenants coming to view the rental unit at noon on May 1, 2014. She testified that when they arrived to view the rental unit on May 1, 2014, the co-tenants were still moving and the Tenant was at work. All of the Tenant's belongings were still in the rental unit and it was not clean. The Landlord told the co-tenants that she would be back at 7:00 p.m. to do the inspection. She went to the rental unit at 7:00 p.m. and no one was there, so she waited 10 minutes and then left. The Landlord stated that she finally got a hold of the Tenant and offered to do an inspection on May 2, 2014, at 6:30 p.m. or May 3, 2014, between 11 and noon. Finally, on May 3, 2014, the Landlord's agent prepared the Condition Inspection Report in the absence of the Tenant or co-tenants. A copy of the Report was provided in evidence.

The Landlord provided copies of Notices she provided the Tenant with respect to showing the rental unit. The Landlord stated that she was unable to re-rent the rental unit until June 1, 2014, because the Tenant overheld and the rental unit was in need of cleaning, painting and repairs.

The Landlord stated that the Tenant still owes utilities for hydro from March 22 – April 30, 2014 and for water from March 12 – April 30, 2014. In addition, the Landlord seeks a late fee for March, 2014, rent which was paid on March 10, 2014. Copies of utility invoices were provided in evidence.

The Tenant gave the following testimony:

The Tenant testified that the carpets were not shampooed professionally at the beginning of the tenancy. He agreed that he did not shampoo the carpets at the end of the tenancy.

The Tenant stated that he moved out on May 1, 2014. He testified that he always met with the Landlord at 7:00 p.m. and that he waited for the Landlord on May 1, 2014, but she didn't turn up.

The Tenant stated that the paint on the doors came off when he removed a sign on the door because the Landlord had used primer instead of paint. He testified that the tiles cracked because they were not installed properly.

The Tenant provided a written statement from one of his co-tenants which provides that there were problems with the electrical system at the beginning of the tenancy; the kitchen tap leaked continuously; the front deck was not usable; the dishwasher did not

work; there was mould in the bathroom; and ants in the kitchen. The co-tenant writes that on May 1, 2013, there was “extreme wear and tear noted to house”.

The Tenant questioned when the Landlord’s photographs were taken. He stated that the rental unit looked like that when he moved in.

The Tenant also provided a written statement from his brother, who visited the rental unit on occasion. The Tenant’s brother wrote that the Landlord and her husband entered the rental unit without proper notice.

The Landlord gave the following reply:

The Landlord denied that primer was used instead of paint on the walls and doors.

### **Analysis**

This is the Landlord’s claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy 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,
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.

I find that the Tenant was disorganized and vague during his oral testimony. The Tenant’s brother’s written statement included statements that were irrelevant to the Landlord’s application.

I find that the Landlord was very organized and that she provided sufficient documentary evidence to prove her claim. The Residential Tenancy Regulation provides that a Condition Inspection Report, completed in accordance with the provisions of the Act and the Regulation, is evidence of the state of repair and cleanliness of the rental unit on the date the inspection took place (absent any preponderance of evidence to the contrary). In this case, the Tenant’s co-tenant was present at the move-in condition inspection and signed the Report indicating that he

agreed with the condition of the rental unit as reflected on the Report. The Report indicates that all rooms/areas/appliances and fixtures were satisfactory at the beginning of the tenancy. The Tenant did not provide any evidence that he had advised the Landlord that the dishwasher didn't work, or that there were any other issues with respect to the condition of the rental unit at the beginning of the tenancy.

I accept that the Landlord provided the Tenant with a Notice of Final Inspection Opportunity on April 17, 2014. If a tenant cannot attend in accordance with the Notice, the tenant is at liberty to have an agent attend in his place. This is the final notice that must be given to a tenant. I find that the Landlord was more than fair in providing ample opportunities for the Tenant to be there at the move-out inspection. I find that the Tenant did not provide sufficient evidence to contradict the move-out Condition Inspection Report.

Section 45(1) of the Act provides:

#### **Tenant's notice**

**45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that**

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) **is the day before the day in the month**, or in the other period on which the tenancy is based, **that rent is payable under the tenancy agreement.**

[my emphasis added]

Section 5 of the Act provides that parties cannot be avoid or contract out of the Act and that any attempt to do so is of no force or effect. Section 53(1) of the Act provides that if a notice to end tenancy provides an incorrect end-of-tenancy date, the notice is deemed to be changed to the date that complies with the Act. In this case, the tenancy agreement indicates that rent was due on the first day of the month, and therefore I find that the tenancy ended on April 30, 2014. I find that:

- the Tenant overhel;
- the rental unit was dirty and damaged beyond reasonable wear and tear at the end of the tenancy, which made it difficult for the Landlord to re-rent it; and
- that the Landlord took reasonable steps to mitigate her loss of revenue for the month of June, 2014.

Residential Tenancy Policy Guideline 1 provides that a tenant is required to shampoo the carpets at the end of a tenancy where the tenancy exceeds 6 months if the Tenant has a pet or there was smoking in the rental unit. In this case, the Tenant had a rabbit and I accept the Landlord's evidence that there was smoking in the rental unit. Whether or not the carpets were professionally cleaned at the beginning of the tenancy, I find that the Landlord's claim for a three bedroom house is a reasonable one.

The tenancy agreement allows for late fees, and based on the Landlord's undisputed testimony and documentary evidence I find that the Landlord is entitled to late fees for the month of March, 2014.

I also find that the Landlord has established her claim for unpaid utilities.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of her monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue for May, 2014	\$1,500.00
Unpaid utilities (\$177.35 + \$92.90)	\$270.25
Late fee	\$25.00
Carpet shampooing (\$124.52 + \$147.32)	\$271.84
Landlord's labour for general cleaning and washing walls (10 hours @\$20.00 per hour)	\$200.00
Wall and door repairs, painting and cleaning supplies (\$50.00 + \$80.00 + \$27.12)	\$157.12
Replace blinds	\$46.73
Replace door chime	\$18.57
Replace 7 broken tiles	\$60.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,599.51
Less security deposit	<u>- \$750.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,849.51</b>

**Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,849.51** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 14, 2014

---

Residential Tenancy Branch

