



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNDC; FF

### **Introduction**

This Hearing was convened to consider cross the Landlords' application for a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties and the Tenant's witness RM gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenant with their Notice of Hearing documents by registered mail sent on July 2, 2014, and that the Landlords served the Tenant with copies of their documentary evidence by registered mail sent on October 10, 2014.

The Landlords acknowledged receipt of the Tenant's documentary evidence.

### **Issues to be Decided**

1. Are the Landlords entitled to a monetary award for damage to the rental unit?

### **Background and Evidence**

This tenancy began on November 1, 2013. Monthly rent was \$1,250.00. The Tenant paid a security deposit in the amount of \$625.00 at the beginning of the tenancy. The tenancy ended by mutual agreement on June 30, 2014. The Landlords have returned the Tenant's security deposit

The Landlords stated that they had agreed that the Tenant and her two children would live in the rental unit, but that another daughter moved in after the tenancy started. They stated that the Tenant also had 2 dogs and 2 cats.

The Landlords testified that the Tenant or her four pets damaged the floors, baseboards, and weather stripping on a door. The Landlords testified that the Tenant did not allow adequate ventilation in the rental unit, which caused mould to grow and moisture damage to some cabinets, inside the closets and the baseboards. The Landlords stated that the Tenant never advised them that she had any issues with moisture or mould in the rental unit. In addition, the Landlords seek to recover the cost of cleaning and painting the rental unit at the end of the tenancy.

The Tenant stated that the rental unit was a converted garage and that it was not properly insulated or ventilated. The Tenant stated that she told the Landlord PK about water issues and rising damp, but that he just shrugged it off. The Tenant testified that the Landlords knew that she had 4 pets at the beginning of the tenancy. The Tenant stated that she cleaned the rental unit at the end of the tenancy.

The Landlords denied that the rental unit used to be a garage and testified that the rental unit was built in August, 2012, with proper insulation. The Landlords testified that the rental unit was built to a standard that was acceptable to municipal inspectors.

The Tenant testified that there was no condition inspection completed at the beginning of the tenancy. She stated that there were marks on the laminate floors when she moved in and that the cabinets were already swollen from moisture. The Tenant agreed that she was responsible for a mark in the floor from moving a table, but that she believed the whole floor did not have to be replaced. The Tenant testified that she told the Landlords that she was willing to bring in a contractor to fix the scratched floor, but the Landlords had it replaced instead.

The Tenant's witness RM testified that he was at the rental unit in November, 2013, when the Tenant moved in. He stated that he noticed that there was an "issue with humidity" and that "water did not eliminate as it should". RM testified that the fan was working in the bathroom, but that water would accumulate on the walls and ceiling.

RM stated that he returned to the rental unit in December, 2013, and noticed a major accumulation of water in the windows, even when the heat was on and the windows were open. He testified that he returned again in January, 2014, and noticed a large accumulation of water on the floor which made him wonder if there was a problem with the foundation.

RM testified that the rental unit was nice, but that the floor was not perfect when the Tenant moved in.

The Landlords testified that the rental unit was in near new condition when the Tenant moved in and that the Tenant did not record anywhere that there were scratches on the floor or signs of water damage. They stated that there were plastic bags behind the washer and dryer and a large amount of dog hair at the end of the tenancy. The Landlords stated that the baseboards were also full of dog hair, which had burned and left black sooty marks on the walls.

The Tenant stated that marks were as a result of the normal use of electric heaters. The Tenant questioned who else had lived in the rental unit, because she had heard that the male Landlords' cousin lived there for a short time after she moved out.

The Landlords stated that there was another occupant in the rental unit from October, 2012, to May, 2013. The Landlords testified that the rental unit was vacant from May, 2013, until November, 2013.

Both parties provided photographs of the rental unit in evidence.

### **Analysis**

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim. In this case, the onus is on the Landlords to prove 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 Landlords 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.

The Tenant denied damaging the rental unit. The Landlords submitted that the Tenant did not record anywhere that there was pre-existing damage to the rental unit; however, it is the responsibility of a Landlord to arrange for a condition inspection to take place at the beginning and the end of the tenancy, in accordance with the requirements of the Act and the regulation. The Landlords did not complete a condition inspection at the beginning of the tenancy, contrary to Section 23 of the Act. A condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless there is a preponderance of evidence to the contrary. In this case, I find that the Landlords did not provide sufficient evidence that the Tenant caused all of the damage that they allege.

However, based on the Tenant's own testimony, I do find that the Tenant caused some damage to the floor while moving a table. I do not find that the Landlords provided sufficient evidence that the floor required total replacement and therefore I allow a nominal amount for this portion of their claim, **\$100.00**.

I also find that the photographs indicate that the walls in the rental unit were marked with black soot. I find that it is unlikely that an electric heater alone would cause such black marks and that it is likely that the marks were caused by an accumulation of dust or hair in or on the heater. Section 32(2) of the Act requires a tenant to maintain reasonable cleanliness throughout a rental unit. I find, based on the photographs provided by the Landlord, and the fact that the Tenant only resided in the rental unit for a period of 8 months, that the Tenant did not reasonably clean up her pets' hair.

Residential Tenancy Branch Policy Guideline 1 provides that indoor paint has a useful life of 4 years. The rental unit was built in August, 2012, and therefore I find that the useful life of the paint had decreased by approximately ½. The Landlords seek a total of \$1,200.00 for the cost of painting the rental unit; however, they did not provide a detailed breakdown or invoices for the cost of materials and labour for painting the rental unit, or a description of what walls, etc. were painted. Therefore, I allow this portion of their claim in the total amount of **\$100.00**.

The remainder of the Landlord's claim for damages is dismissed, as I find that they did not provide sufficient evidence that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act.

The Landlords has been partially successful in their application and I find that they are entitled to recover **\$25.00** of the filing fee from the Tenant.

**Conclusion**

The Landlord is granted a Monetary Order in the amount of **\$225.00** 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 24, 2014

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Residential Tenancy Branch

