



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MND, MNR, MNSD, FF

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; for a monetary Order for unpaid rent and utilities; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 05, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant, via registered mail. The Landlord cited two tracking numbers that corroborate this statement.

The Landlord stated that the aforementioned documents were mailed to the service address for the Tenant that is recorded on the Application for Dispute Resolution. He stated that this address was provided to him by a tracing company. The Landlord submitted a letter from this company, dated June 12, 2014, which declares the Tenants live at the service address.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

On August 08, 2014 the Landlord submitted numerous documents and photographs (digital images) to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by registered mail on August 07, 2014. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit; to compensation for unpaid rent/utilities; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Preliminary Matter

In his claim for compensation the Landlord declared that he is seeking \$2,403.49 for a new toilet, a vanity, a sink and faucet, bathroom and kitchen flooring, a basement subfloor, lighting fixtures, a kitchen faucet, locksets, paint supplies, and cleaning supplies. Although the amount of each claim was not clearly established in the Application for Dispute Resolution, I find that the Tenant was sufficiently informed of the nature of the claims. The Landlord was therefore given the opportunity to provide details of the amounts of each individual claim during the hearing.

In his claim for compensation for \$2,403.49 the Landlord declared that this claim is, in part, for "hardware". At the hearing the Landlord stated that this claim was for a variety of items relating to the repairs, ranging from furnace filters to glue.

I declined to consider the claim for "hardware" pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution does not provide sufficient particulars of this particular item, as is required by section 59(2)(b) of the *Act*. I find the description of "hardware" is extremely vague and it does not serve to clearly inform the Tenant of what the Landlord is seeking. I find that proceeding with the Landlord's claim for "hardware" at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

Background and Evidence

The Landlord stated that:

- this tenancy began on October 01, 2009
- the male Tenant is named on the tenancy agreement
- the male Tenant has signed the agreement
- the female Tenant is named on the tenancy agreement, with her maiden name
- the female Tenant has not signed the agreement but she verbally agreed to the terms of the agreement
- the monthly rent at the end of the tenancy was \$860.00
- rent was due by the first day of each month
- the Tenant paid a security deposit of \$400.00
- the tenancy ended on May 31, 2013
- no rent was paid in April of 2013
- on May 09, 2014 the Tenant paid \$1,020.00 in rent for April and May, leaving a balance of \$700.00.

The Landlord is seeking compensation, in the amount of \$590.20, for water and garbage fees. The Landlord submitted a copy of the tenancy agreement that indicates water and garbage collection is included in the rent. The Landlord stated that when this tenancy began the water and garbage fees were included in his taxes but when the City began billing separately for these services, the Tenant became responsible for paying the utility bill.

The Landlord is seeking compensation, in the amount of \$603.68, to replace the refrigerator. The Landlord stated that the refrigerator needed to be replaced, in part, because it was filthy and leaking a brown fluid from inside. The Landlord submitted a photograph of the bottom of the refrigerator that corroborates the claim it was leaking a brown fluid.

The Landlord stated that the refrigerator needed to be replaced, in part, because the fan and compressor had become clogged with dust due to the condition of the house and the refrigerator no longer worked. He stated that the refrigerator is at least ten years old.

The Landlord is seeking compensation, in the amount of \$200.00, to replace the washer and dryer. The Landlord stated that the washing machine was filthy and full of debris. He stated that he doesn't even know if the dryer worked as he did not test it due to concerns related to his opinion that it may be a fire hazard due to the accumulation of dust in the motor. He stated that he purchased used replacement appliances for \$200.00.

The Landlord is seeking compensation for replacing a toilet. He stated that the toilet needed to be removed to replace the flooring in the bathroom and he opted to replace the toilet at that time because it was filthy. The Landlord submitted no photographs of the stained toilet.

The Landlord is seeking compensation, in the amount of \$350.00, for replacing the kitchen counter and sink. The Landlord stated that the counter and sink were stained during the tenancy and needed replacement. The Landlord submitted photographs of the kitchen counter and sink, which he said were taken before the counter was cleaned. He stated that the many of the stains could not be removed by cleaning the counter and sink. The Landlord did not submit a photograph of the counter or sink after they were cleaned.

The Landlord is seeking compensation for replacing the linoleum in the kitchen. The Landlord stated that the floor was stained during the tenancy and needed to be replaced. The Landlord submitted photographs of kitchen floor, which he said were taken before the floor was cleaned. He stated that the many of the stains remained after the floor was cleaned. The Landlord did not submit a photograph of the floor after it was cleaned.

The Landlord is seeking compensation, in the amount of \$492.80, for disposing of garbage left behind at the rental unit. The Landlord submitted photographs of the rental unit that were taken at the end of the tenancy that show an inordinate amount of garbage and personal items were left in the unit. The Landlord submitted a receipt to show the Landlord incurred this expense.

The Landlord is seeking compensation for cleaning the rental unit. At the hearing he referred to his receipts and stated that it cost \$57.45 for cleaning supplies. He stated that he spent approximately 100 hours cleaning and repairing the rental unit, approximately 65 of which were spent cleaning. The Landlord submitted photographs of the rental unit that were taken at the end of the tenancy that show extensive cleaning was required.

The Landlord is seeking compensation of \$300.50 for replacing the front door of the rental unit and \$31.09 for replacing the lockset. The Landlord stated that the door was "kicked in" during the tenancy, at which time both the door and the lockset were damaged. The Landlord submitted a photograph of the door, which shows that the door and the lockset are damaged. The Landlord was unable to locate a receipt for the door in the evidence package but was able to locate a receipt for the lockset, in the amount of \$31.09.

The Landlord is seeking compensation, in the amount of \$261.42, for replacing a window. The Landlord stated that one of the panes of glass in the window was broken and that the wooden window frame was subsequently damaged when water leaked through the broken glass. The Landlord submitted a receipt to show the Landlord incurred this expense. The Landlord estimated that the window was approximately sixty years old.

The Landlord is seeking compensation, in the amount of \$1,200.00, for replacing the carpet in the basement. The Landlord stated that the carpet needed to be replaced because the carpet was wet and rotting beneath piles of debris left in the basement. He estimates the carpet was approximately 20 years old. The Landlord submitted photographs of debris in the basement.

The Landlord is seeking compensation for replacing the subfloor in the basement. At the hearing he referred to his receipts and stated that it cost \$532.35 to replace the subfloor. The Landlord stated that the dampness of the carpet seeped into the subfloor, which then needed to be replaced. The Landlord submitted a receipt for this expense, although my copy is not clearly legible.

The Landlord is seeking compensation for repainting the rental unit, including compensation for supplies and the approximately 16 hours he spent painting the rental unit. He stated that he spent approximately 100 hours cleaning and repairing the rental unit, approximately 16 of which were spent painting. He stated the walls needed to be repainted because the walls were dirty and had many holes, likely from hanging

posters. The Landlord stated that the rental unit has not been painted in the last ten years.

The Landlord is seeking compensation for replacing the bathroom vanity and sink. At the hearing he referred to his receipts and stated that it cost \$343.39 to repair the vanity and sink. He stated that the sink was cracked during the tenancy and that the water leaked into the vanity, which destroyed the vanity. The Landlord submitted receipts to show that he paid this amount to repair the sink/vanity.

The Landlord is seeking compensation for replacing the linoleum and subfloor in the bathroom. At the hearing he referred to his receipts and stated that it cost \$331.89 to repair the floor. He stated that the water from the cracked sink leaked onto the floor and damaged the flooring. The Landlord submitted receipts to show that he paid \$50.00 for the subfloor and \$271.89 for the linoleum that was used in the bathroom and the kitchen.

The Landlord stated that he spent approximately 100 hours cleaning and repairing the rental unit, approximately 24 of which were spent replacing the basement, kitchen, and bathroom floors. He stated that he also paid 2 youths \$200.00 to help remove the flooring and subfloor.

The Landlord is seeking compensation for replacing two lights that were broken during the tenancy. At the hearing he referred to his receipts and stated that it cost \$114.90 to replace the lights and a variety of light bulbs that were burned out. The Landlord submitted receipts to show that he paid \$114.90 for lights/bulbs.

The Landlord is seeking compensation for replacing the kitchen faucet. At the hearing he referred to his receipts and stated that it cost \$59.74 to replace the faucet. The Landlord stated that the faucet was leaking internally. The Landlord submitted a photograph of the faucet, which he stated was at least ten years old.

The Landlord is seeking compensation for replacing the lock on the rear door. At the hearing he referred to his receipts and stated that it cost \$36.50 to replace the lock. The Landlord stated that the rear door was also forced and that the lock on the door did not work properly. The Landlord submitted a photograph of the rear door.

The Landlord is seeking compensation for lost revenue for the month of June, in the amount of \$800.00. He stated that he was unable to rent the unit for June, given the deplorable condition of the unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$520.80, for the cost of locating a new address for the Tenant. The Landlord stated that the Tenant did not leave the Landlord a forwarding address so he had to hire a tracking company to locate the Tenant. He submitted a receipt to show that he incurred this expense.

The Landlord is seeking compensation for costs associated to travelling to the rental unit, including gas and meals, as he resides in another community.

### Analysis

On the basis of the undisputed evidence, I find that the male Tenant entered into a written tenancy agreement with the Landlord and that the female Tenant entered into a verbal tenancy agreement with the Landlord. On the basis of the undisputed evidence, I find that the rent at the end of the tenancy was \$860.00, payable by the first day of each month.

On the basis of the undisputed evidence, I find that Tenant still owes \$700.00 in rent for May of 2013. As the Tenant was obligated to pay rent when it was due, pursuant to section 26 of the *Act*, I find that the Tenant must pay the Landlord \$700.00 in rent for May.

On the basis of the tenancy agreement submitted in evidence, I find that water and garbage collection was included in the monthly rent during this tenancy. Regardless of how the Landlord is billed for those services, I find that the Landlord remained obligated to pay for those services unless there was an agreement to reduce the rent as a result of the Landlord withdrawing those services. In the absence of evidence to show the rent was reduced, I find that the Tenant was not obligated to pay for these utilities. I therefore dismiss the Landlord's claim for utility charges of \$590.20.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

On the basis of the testimony of the Landlord and the photographic evidence, I find that the refrigerator was not cleaned at the end of the tenancy. I cannot conclude, however that a refrigerator needs to be replaced simply because it has not been cleaned. I therefore cannot conclude that the Landlord is entitled to compensation for replacing the refrigerator as a result of it not being properly cleaned.

I find that the Landlord submitted insufficient evidence to show that the Tenant damaged the refrigerator by allowing the fan and compressor to become clogged with dirt. In reaching this conclusion I was influenced, in part, by the absence of evidence, such as a report from a qualified technician, to show that the refrigerator has malfunctioned as a result of the appliance being misused.

In determining that there was insufficient evidence to show that the Tenant damaged the refrigerator, I was also influenced by the apparent age of the refrigerator. Although the Landlord could not state the actual age of the refrigerator, I find it reasonable to conclude, based on the colour of the refrigerator, which it was at least 20 years old. I therefore find it entirely possible that the fan and/or compressor stopped functioning as a result of normal wear and tear. As the Tenant is not required to repair damage that is reasonable wear and tear, I dismiss the Landlord's claim to replace the refrigerator.

On the basis of the testimony of the Landlord and the photographic evidence, I find that the washing machine was not cleaned at the end of the tenancy. I cannot conclude, however, that a washing machine needs to be replaced simply because it has not been cleaned. I therefore dismiss the claim for compensation for replacing the washing machine.

I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged the dryer. This decision was based, in large part, on the Landlord's testimony that he did not even test the dryer to see if it was functional. Even if the dryer needed to be cleaned, I cannot conclude that the Landlord is entitled to compensation for replacing the dryer as a result of the need for cleaning. I therefore dismiss the claim for compensation for replacing the dryer.

On the basis of the testimony of the Landlord, I find that the toilet was not cleaned at the end of the tenancy. I cannot conclude, however, that a toilet needs to be replaced simply because it has not been cleaned. I therefore dismiss the claim for compensation for replacing the toilet.

I find that the Landlord submitted insufficient evidence to show that the kitchen sink and counter were so dirty that they needed to be replaced and I therefore dismiss the Landlord's claim to replace the sink and counter. In reaching this conclusion I was influenced by the photographs of the counter and sink which were submitted in evidence. In my view those photographs show that, with proper cleaning, the counter and sink could be rendered useable. In reaching this conclusion I was also influenced by the absence of photographs of the counter and sink that were taken after being cleaned, which might cause me to conclude that they needed to be replaced simply because they could not be cleaned properly.

I find that the Landlord submitted insufficient evidence to show that the kitchen floor was so dirty that it needed to be replaced and I therefore dismiss the Landlord's claim to replace the kitchen floor. In reaching this conclusion I was influenced by the photographs of the floor which was submitted in evidence. In my view those photographs show that, with proper cleaning, the floor could be rendered useable. In reaching this conclusion I was also influenced by the absence of photographs of the floor that were taken after being cleaned, which might cause me to conclude that it needed to be replaced because it could not be cleaned properly.

When a landlord is claiming compensation for replacing an item because it is too dirty or stained to be cleaned, I find that photographs are essential to provide me with the opportunity to make an independent assessment on whether the items needs to be replaced.

On the basis of the testimony of the Landlord and the photographic evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove all of their personal belongings from the unit at the end of the tenancy and leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which includes \$492.80 for garbage disposal, \$47.45 for cleaning supplies, and \$1,950.00 for time the Landlord spent cleaning the rental unit.

The compensation for labour is based on the Landlord's estimate he spent 65 hours cleaning the rental unit, which I find to be a reasonable estimate based on the condition of the rental unit as shown by the photographs. The compensation for labour is calculated on an hourly rate of \$30.00, which I find to be reasonable compensation for cleaning a unit left in this deplorable condition.

On the basis of the testimony of the Landlord and the photographic evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the front door and lockset that were damaged during the tenancy. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed.

In these circumstances, I find that the Landlord failed to establish the true cost of repairing the door. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$300.50 to replace the door. As the Landlord was able to locate a receipt for the lockset, I find that the Landlord is entitled to compensation of \$31.09 for replacing the lockset.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

On the basis of the testimony of the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the window that was damaged during the tenancy. The Residential Tenancy Policy Guidelines show that the life expectancy of wooden framed windows is fifteen years. The evidence shows that the broken window was approximately sixty years old. I therefore find that the window had long exceeded its life expectancy and that the Landlord is not entitled to the cost of replacing it.



On the basis of the testimony of the Landlord and the photographic evidence, I find that the rental unit needed repainting. The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is five years. The evidence shows that the rental unit has not been repainted in ten years. I therefore find that the paint had long exceeded its life expectancy and that the Landlord is not entitled to the cost of repainting.

On the basis of the undisputed testimony of the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the cracked sink and the vanity that was subsequently damaged by water. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$343.39 for replacing the vanity and sink.

On the basis of the testimony of the Landlord and the photographic evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage to the basement carpet and subfloor that occurred during the tenancy. The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet was approximately twenty years old. I therefore find that the carpet had long exceeded its life expectancy and that the Landlord is not entitled to the cost of replacing it. I do find that the Tenant is obligated to pay for the cost of replacing the subfloor, in the amount of \$532.35.

On the basis of the undisputed testimony of the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the bathroom floor that was damaged by water leaking from the cracked sink. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. As the cost of the linoleum included flooring for the kitchen, which is the subject of a different claim, I find that it is reasonable to grant compensation for half of the cost of the linoleum, which is \$135.95, and the \$50.00 for the subfloor.

I also find that the Landlord is entitled to compensation for time spent replacing the floor in the bathroom and basement. As the Landlord estimated that he spent 24 hours replacing the bathroom, kitchen, and basement floor and the claim for replacing the kitchen floor has been dismissed, I find it reasonable to award compensation for 2/3 of the estimated time, which is 16 hours. I find \$30.00 per hour is reasonable compensation for labour of this nature and I therefore grant the Landlord compensation of \$480.00 for the time he spent replacing the floor in the bathroom and basement.

I also find that the Landlord is entitled to compensation for some of the \$200.00 he paid to the youths who helped him remove the flooring. As the claim for replacing the kitchen floor has been dismissed, I find it reasonable to award compensation for 2/3 of the \$200.00 paid, which is \$133.33.

On the basis of the undisputed testimony of the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair two light fixtures that were damaged during the tenancy and to replace light bulbs that had burned out during the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$114.90 for repairing the fixtures and replacing the bulbs.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the kitchen faucet. In reaching this conclusion I was heavily influenced by the photograph of the faucet, which does not show the faucet is physically damaged. On the basis of the photograph and the testimony of the Landlord, I find that the faucet is likely more than ten years old. I therefore find it entirely possible that the faucet was leaking due to "normal wear and tear". As the Tenant is not required to repair damage arising from "normal wear and tear", I dismiss the claim for repairing the kitchen faucet.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the lock on the rear door. In reaching this conclusion I was heavily influenced by the photograph of the rear door, which does not show signs of physical force. I therefore find it entirely possible that the lock malfunctioned due to "normal wear and tear". As the Tenant is not required to repair damage arising from "normal wear and tear", I dismiss the claim for replacing the rear door lock.

I find that the rental unit was left in deplorable condition at the end of the tenancy, which prevented the Landlord from renting the unit in June of 2014. I therefore find that the Landlord is entitled to compensation of \$800.00 for lost revenue from June of 2014.

I dismiss the Landlord's claim for compensation for costs associated to travelling to the rental unit, including gas and meals. Section 67 of the *Act* authorizes me to grant compensation to a landlord for costs when a landlord suffers a loss as a result of the Tenant breaching the *Act*.

I do not have the authority to grant compensation for travel costs arising out of a landlord's decision to conduct business remotely, as that expense is more directly related to the Landlord's decision to conduct business from a remote location rather than the Tenant's breaching the *Act*. I consider travel costs to be business expense that must be absorbed by the Landlord and I dismiss the Landlord's claim for travel costs.

Similarly, the *Act* does not require a tenant to provide a landlord with a forwarding address at the end of a tenancy. As the Tenant did not breach the *Act* by failing to provide a forwarding address, I cannot award compensation for any costs arising from the Tenant's failure to provide a forwarding address. I therefore dismiss the Landlord's claim for the costs of tracing the Tenant.

Section 39 of the *Act* stipulates that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep

the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

On the basis of the undisputed evidence, I find that this tenancy ended on May 31, 2013 and that the Tenant has not yet provided the Landlord with a forwarding address, in writing. As more than one year has passed, I find that the Landlord has the right to retain the \$400.00 security deposit without applying it to the debt owed by the Tenant. This should serve to offset the cost of locating the Tenant, although that is not necessarily the intent of the legislation.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,911.26, which is comprised on \$1,500.00 in unpaid rent/lost revenue, \$4,311.26 in damage, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$5,911.26. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: November 26, 2014

---

Residential Tenancy Branch