



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MND; MNSD; MNDC; FF

### **Introduction**

This matter was convened on October 28, 2014, to consider cross-applications. The Landlords applied for an Order of Possession; a Monetary Order for unpaid rent or utilities and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants. The Landlords filed their Application on October 3, 2014, and amended their Application on October 14, 2014, adding a claim for damages.

The Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities.

At the outset of the Hearing on October 28, 2014, it was determined that the Tenants vacated the rental unit on or about October 7, 2014, and that the Landlords took back possession of the rental unit. Therefore, the Landlords' application for an Order of Possession was dismissed. Likewise, the Tenants' application to cancel the Notice to End Tenancy for Unpaid Rent or Utilities was dismissed. The Hearing continued with respect to the remainder of the Landlords' application only.

The Tenants testified that they had not picked up the Landlord's amended Application, which was sent by registered mail on October 14, 2014. Therefore, the Landlords' amended Application for Dispute Resolution was adjourned to allow the Tenants the opportunity to pick up the Landlords' evidence package and an Order was made with respect to service of the Tenants' rebuttal evidence, if any. An Interim Decision was provided to the parties on November 7, 2014, which should be read in conjunction with this Decision.

Both parties signed into the reconvened Hearing and gave affirmed testimony at the Hearing.

The Tenants testified that they picked up the Landlords' amended Application on October 29, 2014, and that they hand delivered their rebuttal evidence to the Landlords on November 5, 2014.

The Tenants also provided documentary evidence to the Residential Tenancy Branch on December 23, 2014. This evidence was not considered, as the Hearing had concluded and I made no Orders that either party could provide additional evidence.

### **Issues to be Decided**

- Are the Landlords entitled to a monetary award for damages; unpaid utilities; the cost of cleaning the rental unit and shampooing the carpets; and for damages to the walls, an entertainment unit, carpet; and a missing ladder?

- May the Landlords deduct their monetary award from the security deposit?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on October 1, 2013. Monthly rent was \$1,500.00, due on the first day of each month. The Tenants were responsible for paying 50% of the hydro and gas utilities. They paid a security deposit in the amount of \$750.00 on September 15, 2013.

The Landlords gave the Tenants a Two Month Notice to End Tenancy for Landlord's Use on August 16, 2014, effective October 31, 2014. The Tenants did not dispute this Notice and gave the Landlords notice on September 27, 2014, that they would be moving out of the rental unit on October 7, 2014. The Tenants also provided their forwarding address in writing on September 27, 2014.

#### **The Landlords gave the following testimony:**

The Landlords seek a monetary award in the amount of **\$304.15** for unpaid utilities to and including October 7, 2014. They testified that on March 7, 2014, the parties had verbal agreement with the Tenants that the Tenants would pay 50% of the water and sewage charges and in exchange, the Landlords would continue to pay for monthly internet charges. The Landlords testified that the Tenants did not pay 50% of the water and sewage charges. The Landlords seek compensation for the cost of internet charges in the amount of **\$441.29**. The Landlords provided copies of bills in evidence, which they testified they provided to the Tenants when they were due.

The Landlords testified that they performed a "walk through" with the Tenants at the beginning of the tenancy and that the rental unit was in very good condition. They stated that they arranged to do a condition inspection with the male Tenant on October 8, 2014, but the male Tenant did not show up. The Landlords did the inspection in the male Tenant's absence. The Landlords testified that the Tenants damaged an entertainment unit in the rental unit by drilling 2 holes into it and 5 holes in the drywall. The Landlords testified that there were already conduits for wires in the entertainment unit and that they did not give the Tenants permission to drill holes into the unit or the wall. They stated that the carpets had not been cleaned and there was a 4 inch cut in the south-east bedroom carpet, there was debris in the kitchen and the main bathroom, items left in the garage, the rental unit was not reasonably clean.

The Landlords submitted that the Tenants did not replace 10 burned out bulbs in the rental unit. The Landlords seek a monetary award in the amount of **\$32.30** for replacing the bulbs. A copy of a receipt was provided in evidence.

The Landlords stated that the rental unit was only 3 years old when the Tenants moved in and that the carpets were in very good condition when the Tenants moved in. They stated that the Tenants damaged the carpets and they seek compensation for the estimated cost of replacing them in the amount of **\$527.02**. The Landlords provided a copy of three estimates in evidence and are seeking to recover the middle estimate of the three.

The Landlords provided an invoice for cleaning the rental unit, dated October 9, 2014, and seek to recover that cost in the amount of **\$373.80**.

The Landlords seek a monetary award in the amount of **\$450.00** for drywall repair.

The Landlords testified that the entertainment unit cannot be satisfactorily repaired. They seek a monetary award in the amount of **\$750.00** for its replacement. The Landlords provided estimates for what they believe to be the reasonable cost of a similar entertainment unit.

The Landlords testified that they removed the Tenants' abandoned belongings from the rental property and stored them for one month. The Landlords seek a monetary award in the amount of **\$225.00** for the cost of disposal of the abandoned belongings. The Landlords provided a copy of a receipt in evidence.

The Landlords testified that the Tenants removed a ladder from the rental unit. The Landlords seek a monetary award for the cost of replacing the ladder in the amount of **\$99.00**. The Landlords provided a photocopy of an advertisement showing what they believe to be a similar ladder in evidence.

The Tenants gave the following testimony:

The Tenants stated that they used to be good friends with the Landlords, but that their friendship turned sour after the tenancy began. The Tenants testified that the landlords tried to change the terms of the tenancy agreement "every month", but that the Tenants did not agree.

The Tenants stated that they cleaned the rental unit "top to bottom" when they moved out, but acknowledged that they overlooked a fan, a spoon and glass at the bottom of the dishwasher, one set of blinds and the dryer lint trap.

The Tenants testified that the Landlords "never had time" to complete a Condition Inspection Report at the beginning of the tenancy. The Tenants stated that the garage was full of the Landlord's things at the beginning of the tenancy and that the Landlords left ashtrays, candles and a garden swing at the rental unit. The Tenants testified that 2 closets and the laundry room still had soap in the cabinets.

The Tenants testified that the light bulbs were burned out when they moved in and that the carpet was already stained. They testified that the Landlords had a claim against the builder with respect to the carpets because they were poorly installed and had pulls. The Tenants stated that the snag in the carpet was from the Landlords' filing cabinet which was in what used to be the Landlords' office.

The Tenants testified that the conduits for the wires in the entertainment unit did not line up properly and that the Landlords suggested that they put three small holes in the entertainment unit to accommodate the wires. The Tenants testified that the Landlords saw the entertainment unit after the Tenants had set it up and commented on how nice it looked.

The Tenants stated that the garage was a "common area" and that they were not the only ones using it. The Tenants testified that they did leave "a few things", but a smaller amount than the Landlords were alleging. The Tenants deny removing a ladder from the rental property.

The Tenants testified that they believe they owe \$300.52 for the portion of October, 2014, that they lived in the rental unit, including \$75.15 for their share of phone, hydro and gas. They stated that they were never paid their compensation under the Two Month Notice to End Tenancy for Landlord's Use. The Tenants confirmed that they have not filed for the compensation. The Tenants stated that the Landlords did not provide them with copies of the utility bills, except by text message. The Tenants stated that they

told the Landlords that the text images were not legible, but the Landlords did not provide them with legible copies.

The Tenants disputed that they owe for a full year of internet usage. They stated that some of the charges were for movies they didn't order.

### **Analysis**

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, I may determine the amount of, and order that party to pay, compensation to the other party.

To prove a loss and have the Tenants 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.

Section 21 of the Regulation provides that a condition inspection report completed in accordance with the Regulation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary. Section 23 of the Act sets out the requirements with respect to how a condition inspection must be conducted. The onus is on the Landlords to ensure that a condition inspection report is completed in accordance with the Act and Regulation. In this case, I find that no Condition Inspection Report was completed at the beginning of the tenancy that complies with the requirements of the Act and Regulation. The Tenants dispute the Landlords' testimony with respect to their claim regarding burned out light bulbs; carpet damage; and the absent ladder. Therefore, I find that the Landlords have not provided sufficient evidence to satisfy parts 1 and 2 of the test above. This portion of the Landlords' claim is **dismissed without leave to reapply**.

The Tenants disputed the Landlords' claim that the tenancy agreement was amended to include an agreement that the Tenants would pay 50% of the water and sewage charges and in exchange, the Landlords would continue to pay for monthly internet charges. The tenancy agreement provided in evidence was not amended to reflect such an agreement. The onus is on the Landlords to prove their claim and I find that they did not provide sufficient evidence to do so. This portion of their claim is also **dismissed without leave to reapply**.

The Landlords' quote for replacement of the entertainment unit is for \$750.00, sight "unseen". In addition, I find that the Landlord did not provide sufficient evidence that the entertainment unit could not be repaired and must be replaced. Therefore, I find that the Landlords have not provided sufficient evidence to satisfy parts 1, 2, 3 and 4 of the test above. This portion of the Landlords' claim is **dismissed without leave to reapply**.

With respect to the Landlords' claim for drywall repair, I find that the Landlords have not provided sufficient evidence to satisfy parts 2 and 3 of the test above. No Condition Inspection Report that complies with the requirements of the regulation was completed at the beginning or the end of the tenancy. In addition, the invoice provided by the Landlords indicates that \$400.00 was for labour, which I find to be excessive for the amount of damage to the wall that the Landlords claim. This portion of the Landlords' claim is **dismissed without leave to reapply**.

I find that the Landlords did not provide sufficient evidence with respect to their claim for replacement of the ladder. There was no inventory done at the beginning of the tenancy with respect to tools or other items left for the Tenants' use, and the Tenants denied that they removed a ladder from the rental property. This portion of the Landlords' claim is **dismissed without leave to reapply**.

The Landlords provided more than 100 pages of documents in support of their claim for unpaid utilities, including e-mails, hand written calculations and copies of hydro accounts. These documents date back to the beginning of the tenancy. When a party is claiming a monetary award, the onus is on that party to provide clear and concise evidence (for example a monetary order worksheet) which sets out how they came to the amount claimed. In this case, I find the Landlords' documentary evidence to be confusing and not helpful. The Tenants testified that they agreed that they owe the Landlords \$300.52, and therefore, I allow this portion of the Landlords' claim in the amount of **\$300.52**.

Section 37 of the Act requires tenants to leave the rental unit reasonably clean at the end of a tenancy. Landlords may, if they choose to, do additional cleaning for the comfort of new occupants, but the standard to be met by tenants is "reasonably clean". "Reasonably clean" is a subjective concept. In this case, I find the Landlords have a higher expectation of what is "reasonably clean". The Tenants acknowledged that they did not clean some items at the end of the tenancy. The invoice provided by the Landlords indicates a charge of \$216.00 for carpet cleaning and \$150.00 for cleaning. I accept the Tenants' testimony that they cleaned the rental unit with the exception of a fan, a spoon and glass at the bottom of the dishwasher, one set of blinds and the dryer lint trap. I find that two hours labour at \$25.00 an hour is sufficient compensation for the cost of cleaning. I allow the Landlords' claim for carpet cleaning in the amount of \$216.00, for a total of **\$276.00** for this portion of the Landlords' claim.

I find that there is sufficient evidence that the Tenants abandoned some items at the rental property and that the Landlords dealt with those items appropriately. This portion of the Landlords' claim is allowed in the amount of **\$225.00**.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlords may the security deposit in partial satisfaction of the Landlords' monetary award.

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

Unpaid utilities	\$300.52
Cost of cleaning and carpet shampoo	\$276.00
Cost of disposing of abandoned property	\$225.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$851.52

Less security deposit	- \$750.00
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b>	<b>\$101.52</b>

**Conclusion**

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlords with a Monetary Order in the amount of **\$101.52** for service upon the Tenants. 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: January 15, 2015

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Residential Tenancy Branch

