



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application (filed June 16, 2014): MNSD

Landlord's application (filed October 6, 2014): MNDC, MND, MNSD

### **Introduction**

This Hearing was convened to consider cross applications. The Tenants filed an Application for Dispute Resolution seeking double the amount of the security deposit and pet damage deposit.

The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security deposit towards partial satisfaction of her monetary award.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties and their witnesses gave affirmed testimony.

This Hearing was convened on October 22, 2014. The Landlord testified that she served the Tenants' advocate, which was their forwarding address, on June 23, 2014. The Landlord provided a written statement of the Tenants' advocate, confirming receipt on behalf of the Tenants. The Tenant JS stated that he received the documents "about a month ago". He stated that he received the Landlord's documentary evidence which consisted of 100 pages of paper documents and 38 photographs "one week ago".

The Tenant JS stated that the Tenants' Notice of Hearing documents were sent by registered mail to the Landlord on October 7, 2014. The Landlord acknowledged receipt of the documents on October 9, 2014.

The Tenant JS stated that the Tenants need more time to prepare and asked for an adjournment. The Landlord consented to an adjournment and the matters were adjourned.

The Hearing reconvened on December 10, 2014. The Hearing continued for 1 ½ hours on December 10. The Landlord gave approximately an hour of testimony. Her witnesses did not give testimony on December 10, 2014. The Tenants and their witness also gave testimony. The Tenants' witness expressed displeasure at having to take a day off work and stated that he didn't feel the Tenants were getting a fair hearing. I adjourned the Hearing again, in order to allow the Tenants to give more testimony.

The Hearing reconvened on January 20, 2015. Both parties were provided with the Notice of Reconvened Hearing by the Residential Tenancy Branch. The Tenants did not sign into the Hearing, which remained open for 35 minutes. The Hearing continued in the absence of the Tenants. The Landlord provided further testimony, along with her witnesses.

### **Issues to be Decided**

1. Are the Tenants entitled to a monetary award in the equivalent of double the amount of the security deposit and pet damage deposit pursuant to the provisions of Section 38(6) of the Act?
2. Is the Landlord entitled to a monetary award for damage to the rental property, pursuant to the provisions of Section 67 of the Act? If so, may the Landlord apply the deposits in partial satisfaction of her monetary award?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 1, 2013, and ended on May 31, 2014. Rent in the amount of \$900.00 was due in advance on the last day of each month. The Tenants paid a security deposit in the amount of \$450.00 in May, 2013, and a pet damage deposit in the amount of \$450.00 (\$225.00 on June 3, 2013 and \$225.00 on July 15, 2013).

The rental unit is the lower suite of a house. The upper suite is occupied by the Landlord.

The Tenants provided the Landlord with their forwarding address in writing, by registered mail, on June 3, 2014. The Tenants provided a copy of the Canada Post Tracking printout, which confirms that the Landlord received the Tenants' forwarding address on June 4, 2014.

A move-in Condition Inspection Report was completed by the Landlord and the Tenant JS on May 25, 2013. A move-out Condition Inspection Report was completed by the Landlord on May 31, 2014. A copy of the Report was provided in evidence.

Photographs and copies of receipts were also provided in evidence.

The Landlord gave the following testimony:

The Landlord stated that it was a term of the tenancy agreement that the Tenants were responsible for yard maintenance including lawn mowing, watering, weeding and disposing of their dog's waste. The Landlord testified that the rental unit had just been renovated before the Tenants moved in, including new floors. The Landlord testified that the Tenants did damage to the rental property, as follows:

- Damage to kitchen and bathroom floors, which had to be replaced. The Landlord stated that the Tenants had gouged the kitchen floor, leaving large holes beside the fridge. She stated that the Tenants overloaded the fridge, causing it to break down and leaving a permanent bow in the bottom of the freezer. The Landlord testified that the Tenants did not inform her that the toilet had been backing up and that there were permanent grey stains on the bathroom floor and deep cuts in the lino. The Landlord seeks a monetary award in the amount of **\$765.00** for labour and **\$381.29** for materials to replace the damaged floors.
- Permanently stained carpets. The Landlord testified that the Tenants borrowed a carpet cleaner and attempted to clean the carpets, but did not do a good job. She stated that the carpets were also new at the beginning of the tenancy. The Landlord seeks to recover the cost of carpet cleaning (**\$117.60**) and flea treatment (**\$30.00**).
- Broken master bedroom window, which was broken on the inside pane. The Landlord seeks compensation in the amount of **\$100.00** for replacing the window.
- Three damaged large window screens, for which the Landlord seeks **\$250.00** to replace.
- Fence broken by Tenant's pet. The Landlord seeks **\$30.00** for labour to repair.
- Weather stripping destroyed by dog. The Landlord seeks **\$30.00** compensation for replacing the weather stripping.
- Rust stain on the wood stove. The Landlord seeks **\$20.00** for the cost of rust repair paint.
- Damaged garden wall.
- Cost to replace dead plants, **\$127.07**.
- Damaged kitchen window blind, **\$42.46** (materials and labour).
- Missing shower curtain rings, **\$5.57**.

- Abandoned garbage. The Landlord seeks compensation in the amount of **\$30.00** for dump fees and gas.
- Missing heavy-duty 30 foot extension cord.
- Cost to replace deadbolt lock plus labour (**\$57.03**) and suite door lock plus labour (**\$46.55**).

The Landlord stated that the Tenants were upset when she told them that the cost to repair/replace the damages and the missing extension cord would be more than the total of their deposits. She testified that the Tenants refused to sign the move-out Condition Inspection Report, "stormed off", and did not return the keys to the rental unit.

The Landlord's witnesses gave the following testimony:

The Landlord's witness KL testified that she was considering renting the rental unit just before the Tenants moved in, and immediately after the renovations. She stated that the rental unit was "pristine". KL stated that she was also there for the move-out inspection and noticed that the master bedroom window was cracked, the lino was stained in the bathroom from water damage, and the Tenants had bolted something to the ceiling, which they had taken down. She stated that it left holes in the ceiling the size of a quarter. KL testified that the floor in the kitchen was also damaged beside the fridge.

The Landlord's witness MM stated that she is the Landlord's daughter and was present throughout all of the inspections. She testified that she helped to paint the rental unit before the Tenants moved in and that new floors were laid immediately before the Tenants moved in. MM stated that the Tenant tried to convince the Landlord that men working in the back yard damaged the master bedroom window, but the window was cracked on the inside pane.

The Tenants gave the following testimony:

The Tenants stated that they did not agree that the Landlord could keep any of the security deposit or the pet damage deposit.

The Tenant JS stated that the Landlord told them at the beginning of the tenancy, "the yard is yours to care for". JS testified that he removed some plants, but did not do damage to the garden wall.

JS stated that he was home most days and did not wear work boots in the house. He said he had no idea how the marks were made on the bathroom floor. He testified that the lighting was low in the bathroom, so he never saw the floor discoloration.

JS testified that he returned the keys to the Landlord “the last night that we were there”. The Tenants acknowledged that the carpets were professionally cleaned at the beginning of the tenancy; however, they stated that their cat did not have fleas. The Tenants acknowledged that the weather stripping was torn by their dog.

The Tenants stated that the crack in the bedroom window “just appeared” and that they don’t recall telling the Landlord about it. They submitted that the window might have been cracked by an aluminum ladder that workmen were using, or by the house “settling”.

The Tenants denied responsibility for the broken screens. They stated that they broke when they removed them, but submitted that it was not their responsibility to replace them.

JS denied placing a plant or a small container of water on the wood stove. He said he didn’t know why it was rusted and perhaps it was like that at the beginning of the tenancy.

The Tenants denied removing the shower curtain rings and the extension cord from the rental property. They stated that the fence was in disrepair when the tenancy started. JS testified that he did a lot of work in the yard; re-seeding the grass and fixing the shed floor.

The Tenants stated that they spent 18 ½ hours cleaning the rental unit at the end of the tenancy and that “everything was perfect”. They stated that they would have repaired the weather stripping and a few other repairs, but the Landlord would not allow them back on the property.

## **Analysis**

### **Regarding the Tenants’ application:**

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or

**2. make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, the Landlord applied against the security deposit within 15 days of receipt of the Tenants' forwarding address and therefore I find that the Tenants are not entitled to compensation under Section 38(6) of the Act.

The Landlord has applied against the security deposit and therefore it will be dealt with in accordance with the provisions of the Act.

Is the Landlord entitled to a monetary award for damage to the rental unit?

The Landlord's Application for Dispute Resolution discloses a different amount for her monetary claim from the amounts provided in her documentary evidence and oral testimony. Applications cannot be amended by providing documentary or oral evidence alone, the Application itself must be amended and re-served upon the Tenants. I have only considered the amounts provided on her Application, as it was not amended and re-served on the Tenants, pursuant to the Rules of Procedure.

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish 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 Landlord to prove 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 Tenants in violation of the Act or agreement,

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.

Condition Inspection Reports must be completed at the beginning and the end of a tenancy. Section 21 of the regulation provides that a Condition Inspection Report, completed in accordance with Part 3 of the regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, **unless either party has a preponderance of evidence to the contrary.**

In this case, the Tenants did not dispute that the rental unit had been freshly renovated when they moved in. They did not dispute that the damages were done; however, they disputed the majority of the damages that the Landlord claims were their responsibility.

Pursuant to the documentary evidence and testimony of both parties, I accept that the floors were new when the Tenants moved into the rental unit. I also accept that the bathroom and kitchen floors were damaged during the tenancy and that the Tenants are responsible for the cost of replacing them. The Landlord's Application discloses a claim in the total amount of \$1,146.29 (\$765.00 plus \$381.29 for labour) for this portion of her claim. The documentary evidence provided supports a total of \$507.28 for materials and \$365.15 for labour, totalling \$872.43. The Residential Tenancy Policy Guidelines provide that the useful life linoleum is 10 years. I find that the linoleum was 1/10<sup>th</sup> of the way through its useful life and that the monetary award must be adjusted accordingly. Pursuant to the provisions of Section 67 of the Act, I award the Landlord the amount of **\$785.19** for this portion of her claim (\$872.43 - \$87.24).

The Tenants did not complete the Condition Inspection Report at the end of the tenancy and therefore, I find that the Landlord has established her claim for the cost of replacing the locks and deadbolt pursuant to the provisions of Section 21 of the regulation. The documentary evidence provided by the Landlord supports this portion of her claim for the cost of materials in the amount of \$83.98 (\$47.03 + \$36.95). I allow a nominal amount for the Landlord's labour in the amount of \$10.00 for a total of **\$93.88**.

Likewise, I allow the Landlord's claim in the amount of **\$117.60** for the cost of cleaning the carpets at the end of the tenancy. I find that the Landlord did not provide sufficient evidence with respect to her claim for flea treatment and this portion of her claim is **dismissed without leave to reapply.**

The Landlord replaced the kitchen blind with a sheer curtain and tension rod. I find that she did not provide sufficient evidence with respect to the cost of replacing the blind

with a similar blind and therefore this portion of her claim is **dismissed without leave to reapply**.

The Tenants did not deny that the inside window was broken. I find it probable that the Tenants are responsible for breaking the window. The Tenants did not deny breaking the window screens and therefore I allow this portion of the Landlord's claim. The Landlord provided an invoice for the cost of replacing the window in the amount of \$178.50; however, her Application discloses a claim in the amount of \$100.00. Therefore, I allow this portion of her claim in the amount of **\$100.00**. Based on the estimate for the cost of replacing the window screens, I allow this portion of the Landlord's claim in the amount of **\$250.00**.

The Landlord provided a receipt for dump fees in the amount of \$33.14. The Landlord's Application discloses a claim in the amount of \$30.00 and therefore I allow **\$30.00** for this portion of her claim.

The Tenants did not dispute that their pet damaged the weather stripping. I allow the Landlord's claim in the amount of **\$30.00** for replacing the weather stripping.

I find that the Landlord did not provide sufficient evidence with respect to her claim that the Tenants removed the shower curtain rings. This portion of her claim is **dismissed without leave to reapply**.

The Landlord provided a receipt for the cost of rust repair paint. I allow this portion of her claim in the amount of **\$11.31**.

Tenants may not change landscaping without the permission of the Landlord. I find that the Landlord did not give the Tenants permission to remove plants from the rental property. The Landlord provided an invoice for the cost of replacing the plants. I allow this portion of her claim in the amount of **\$73.37**.

I find that the Landlord did not provide sufficient evidence that the Tenants are responsible for the damage to the fence. This portion of her claim is **dismissed without leave to reapply**.

The Landlord did not claim a monetary award for the remainder of the damages on her Application for Dispute Resolution, and therefore the Landlord's remaining claim is **dismissed without leave to reapply**.

I find that the Landlord has established a total monetary award, calculated as follows:



Replacing kitchen and bathroom floors	\$785.19
Replacing lock and deadbolt	\$93.88
Carpet cleaning	\$117.60
Replacing window and screens	\$350.00
Dump fees	\$30.00
Cost to replace weather stripping	\$30.00
Rust repair paint	\$11.31
Cost to replace plants	<u>\$73.37</u>
TOTAL MONETARY AWARD	<b>\$1,491.35</b>

Pursuant to the provisions of Section 72 of the Act, I hereby apply the security deposit and pet damage deposit towards partial satisfaction of the Landlord's monetary award. I provide the Landlord with a Monetary Order for the balance in the amount of **\$591.35**.

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$591.35** for service upon the Tenants. This Order may be filed in the Provincial Court 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: January 27, 2015

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Residential Tenancy Branch

