



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This is an application filed by the landlord for a monetary order for damage to the unit, site or property, for unpaid rent, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence.

During the hearing the tenant provided a new mailing address as she no longer resides at the dispute address when the landlord filed an application for dispute resolution. The Residential Tenancy Branch File shall be updated with the new mailing address.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?  
Is the landlord entitled to retain the security deposit?

### Background and Evidence

The landlord stated that there was no signed tenancy agreement, but this is disputed by the tenant. The tenant did not provide any details of the signed tenancy agreement.

Both parties agreed that this tenancy began in February or March of 2003 on a month to month basis with a \$1,500.00 monthly rent that later became \$1,720.00 by the end of the tenancy. Both parties also agreed that a \$800.00 security deposit was paid.

The landlord seeks an amended monetary claim of \$22,274.64 which consists of \$2,274.84 for unpaid rent for the period June 1 to 30 and July 1 to July 10, 2014 and \$20,000.00 for damages to the rental unit. The landlord clarified that the unpaid rent

claim is for reimbursement of compensation for a 2 month notice to end tenancy issued for landlord's use that the tenant failed to comply with. The landlord states that because the tenant was able to obtain an order from the Supreme Court of British Columbia staying the order of possession until August 15, 2014, the tenant did not comply with the original notice to end tenancy issued for landlords use and is not entitled to compensation equal to one months rent. The landlord is also seeking recovery of 10 days of overholding the rental unit for 10 days from July 1, 2014 to July 10, 2014.

The tenant disputes the claim of the landlord and stated that an order was given after an application to the Supreme Court was made extending the order of possession date until August 15, 2014, but vacated the rental unit on July 1, 2014.

The claim in damages is based upon an estimate for \$15,123.05 from Jordans dated September 4, 2014 to supply and install Fabrica(carpet) and an estimate for \$4,830.00 from KSP Painting & Renovations dated September 12, 2014. The owner, K.C.M.C. clarified that none of the work in the estimates have been performed and that the renovation/repair work to the rental property were delayed and began in September 2014 and are still unfinished by another contractor.

The tenant disputes the claim in damages by the landlord by stating that the landlord failed to maintain the property in a suitable manner. The tenant states that the landlord was notified on many occasions but failed to perform any maintenance over the course of the tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find that the landlord has failed to establish a claim in damages for the unpaid rent/reimbursement of compensation. The tenant complied with the notice after receiving an ordered stay from the Supreme Court of British Columbia extending the

effective end of tenancy date. The tenant was still entitled to compensation as per the original notice. As such, I find that this portion of the landlord's claim is dismissed.

The claim made by the landlord is disputed by the tenant and the landlord has failed to provide sufficient evidence to satisfy me that 1) the tenant over held the rental unit beyond July 1, 2014. This portion of the claim was disputed by the tenant and the landlord failed to provide sufficient evidence to satisfy me that the tenant over held the rental unit. 2) That the tenant caused damage due to neglect. Although the landlord has submitted photographs of the rental unit showing the condition of the rental unit at the end of the tenancy that would be considered beyond normal wear and tear, the tenant is disputing that the unit was provided in this condition at the beginning of the tenancy and that it was poorly maintained during the course of the tenancy after repeated requests for maintenance. The landlord stated that there was no evidence as to the condition of the rental unit at the beginning of the tenancy. 3) The landlord has not provided any evidence of an actual amount required for compensation for the loss as the landlord states that estimates were provided and that the work is ongoing even 6 months after the end of the tenancy from different contractors. I note that the photographs submitted by the landlord do not show any evidence of work requiring 6 months of renovations. The only significant aspect shown in the photographs is that of the carpet requiring significant cleaning or possibly replacement. The landlord has also failed to provide any evidence of the age of the original carpet and its value or that the carpet required replacement.

The landlord's monetary claim is dismissed for insufficient evidence.

### Conclusion

The landlord's application is dismissed.

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 29, 2015

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Residential Tenancy Branch

