



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNR, MND, MNDC, FF  
For the tenant: MNDC, FF

### Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlords applied for a monetary order for unpaid rent, alleged damage to the rental unit and monetary compensation for damage or loss under the Act, regulations, or tenancy agreement, and for recovery of the filing fee paid for this application.

The tenant applied for a monetary compensation for damage or loss under the Act, regulations, or tenancy agreement and for recovery of the filing fee paid for this application.

This hearing began on December 18, 2014, and dealt only with a portion of the landlord's application during the initial 90 minute hearing. The parties were informed that the hearing would be adjourned and reconvened to conclude the landlord's presentation of their claim and to deal with the tenant's application. This present hearing proceeded on that basis.

At both hearings, all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Are the landlords entitled to monetary compensation and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy began on May 1, 2010, according to the landlord's evidence, and a new written tenancy agreement was signed by the parties, showing a fixed term beginning on July 1, 2013, ending on June 30, 2014, for a monthly rent of \$1500. The tenant vacated the rental unit at the beginning of February 2014.

***Landlord's application-***

The landlords' monetary claim is as follows:

Water bill	\$174.14
Hydro	\$228.03
Suite clean	\$250
Dumping fee and labour	\$276
Painting for damaged wall and labour	628.06
Window and screen replacement	\$803.03
Broken toilet lid	\$258.64
Rent for ½ February 2014	\$750
Loss of rent revenue	\$3000
<b>Total</b>	<b>\$6,367.90</b>

The landlords' relevant documentary evidence included, but was not limited to, photographs of the rental unit and yard, written explanations, utilities bills, text message and email communication between the parties, the written tenancy agreement, and a copy of a cheque written by the landlords.

**The parties provided the following:**

*Water bill-*

The landlord submitted that the tenant left owing a portion of the water bill when she moved out on February 1, 2014, which was divided equally between the upper and lower tenants. The landlord submitted further that she sent the bill in an email to the tenant, without providing the date for the notification.

In response, the tenant agreed that she owed for her portion of the water through February 1, 2014.

*Hydro-*

The tenant agrees she owes for hydro through February 1, 2014.

*Suite clean-*

The landlord submitted that the tenant left the rental unit in an unclean condition, which required cleaning afterwards. The tenant submitted photographs of the rental unit and confirmed there was not a condition inspection of the rental unit or a condition inspection report at the start of the tenancy.

The tenant submitted that she left the rental unit clean and that a lot of the pictures submitted by the landlord were items shown from a shared garage, and were not her items. The tenant submitted further that the landlord had loaned her a bed and was not her bed to dispose.

The landlord rebutted, and said all the items in the photographs were the tenant's.

The tenant countered that there were multiple tenants in the multi-unit building during the course of the tenancy, leaving behind their personal property.

*Dumping fee and labour-*

The landlord submitted that they incurred costs in dumping the left behind personal property of the tenant, including the dumping fee and labour to haul away the items. The landlord submitted receipts for these expenses, dated March 1 and April 12, 2014, explaining that she had not cleaned the rental unit earlier after the tenancy as she was busy until near the beginning of May.

In response, the tenant submitted that she left the rental unit clean.

*Painting for damaged wall and labour-*

The landlord's husband provided the labour for damage repair and wall painting, which occurred in February, March and April 2014, according to the landlord. The repair was necessary due to tenant damage, according to the landlord. Some of the damage included cat scratches and children's drawings on the wood, along with holes.

In response, the tenant submitted that she doesn't believe she is responsible as her cat didn't damage the rental unit.

*Window and screen replacement-*

The landlord submitted that the tenant broke the window and was necessary therefore to replace it.

The landlord stated she believed the window was 10-15 years old, as it was the same window as when they purchased the home in 2003. The sum claimed was from a quote the landlord received.

In response, the tenant submitted that all windows except this window in question were replaced during the tenancy, and that the window was broken when she moved in.

The landlord responded that the tenant never mentioned a broken window during the entire tenancy.

*Broken toilet lid-*

The landlord submitted that the toilet lid in the rental unit was replaced after the tenancy ended, due to tenant damage.

In response, the tenant submitted that the toilet lid was broken the entire time she lived there.

*Rent for ½ February 2014-*

The landlord submitted she was entitled to loss of rent revenue for half of February 2014 as the tenant gave notice on January 20, 2014, that she was moving out on February 15, 2014, and instead, moved out on February 1, 2014.

In response, the tenant submitted that originally she did not know if she could move out before February 1, 2014, but ended up that she could. The tenant contended that the landlord was informed verbally that she would be vacating by February 1, 2014.

*Loss of rent revenue-*

The landlord submitted that the rental unit was left in an unliveable condition by the tenant, so that it could not be rented, presumably for March and April 2014, though not specifically designated. Due to this, the landlord is entitled to loss of rent for those 2 months, according to the landlord.

In response, the tenant submitted that the landlord was in breach of the tenancy agreement, without explanation as to what that breach was.

In questioning by the landlord's legal counsel, the landlord submitted in final support that when they entered the rental unit at the beginning of February 2014, they discovered the rental unit had not been cleaned, garbage was left everywhere, the window had cat prints and scratches, that the landlords spent hours in cleaning the rental unit, and that all the garbage and personal property removed by them belonged completely to the tenant.

The landlord submitted further that the fireplace was not cleaned by the tenant, which required additional cleaning with a vacuum, that the oven required extra cleaning, that there were no other children living in the residential property, and that all the painting took at least 20 hours.

The landlord confirmed the tenant lived in the rental unit for over 3 ½ years, and was not painted during that time, that there was originally a door stop on the door nearest the hole in the wall, and that the broken window was at least 10 years old.

In response, the tenant submitted that a lot of the items in the yard as depicted in the photos were not hers, that the landlord provided a partial can of paint for the 1400 square foot home, which was not enough, that the landlord replaced all the windows with funds received from a grant, with the exception of the broken window, and that she

attempted to have the fireplace cleaned by someone, but he would not touch it as the fireplace was illegal.

***Tenant's application-***

The tenant's monetary claim is as follows:

Emotional stress	\$1000
Travel expense	\$450
Filing fee	\$50
<b>Total</b>	<b>\$1500</b>

The tenant's relevant documentary evidence included, but was not limited to, witness statements and text message and email communications between the parties.

In support of her request for compensation for emotional stress, the tenant submitted that she was forced to move from the rental unit early and that she lived under duress during the tenancy, suffering health problems, due to the landlord's failure to address her noise complaints. The amount requested was the amount she had to pay for another security deposit, according to the tenant.

As to the claim for travel expenses, the tenant submitted that her daughter had to accompany her son to and from school, due to the relocation, and the cost of bus passes approximated \$450.

In response to the tenant's application, the landlord submitted that the tenant left because she acquired new housing, and the only noise complaint from the tenant was from a buzzing heater, which they fixed.

It is noted that during the landlord's response, the tenant exited the telephone conference call hearing and did not return.

Analysis

***Landlords' application-***

*Water bill-*

I find the landlord submitted sufficient evidence, and with the tenant's confirmation, that the tenant owed for a half portion of the water usage. I therefore grant the landlords' claim for \$174.39, as shown by the billing statement entered into evidence.

*Hydro-*

I find the landlord submitted sufficient evidence, and with the tenant's confirmation, that the tenant owed for a half portion of the hydro usage. I therefore grant the landlords' claim for \$228.03, as shown by the billing statement entered into evidence.

*Suite clean; dumping fee and labour; painting for damaged wall and labour-*

In reviewing the photographic evidence, I am convinced that tenant failed to leave the rental unit reasonably clean, as required by section 37(2) of the Act. I also accept that the landlords were required to clean and empty the rental unit, at least to some extent. I am not convinced that the landlords are entitled to their entire claim, however.

It was not clear that all the items removed by the landlords belonged to the tenant, as there was no proof that some of the items had not been commingled with other tenants' personal property who shared the residential property and garage or some left by the landlord for the tenant's use. I also considered that the landlords did not provide proof that a move-out condition inspection between the parties occurred, and that the landlords only notified the tenant of an issue with the state of the rental unit through a text message on February 3, 2014, after the tenancy ended.

Additionally, I find the landlord submitted insufficient evidence as to the age and state of the walls and painting at the beginning of the tenancy, such as would be shown through a move-in condition inspection report or other evidence. I find some damage to the wall, for instance, was a hole appearing to be made by a door knob, which a door stop would easily prevent. Other holes appear to be nail holes, but not in an excessive amount. Residential Tenancy Branch Policy Guideline #40 provides that the useful life of interior paint is 4 years, and therefore the interior paint would be fully depreciated at any rate, as the tenancy continued for nearly 4 years and there was no proof provided as to the exact age of the paint.

Taken as a whole, I find it reasonable that the landlords were required to clean the rental unit, especially the oven and fireplace, and to remove the clutter in the rental unit, such as papers on the floor. I also find the landlords would be required to sand the

rough window frames left by cat scratches. I am not prepared to award the landlords compensation for wall repair and painting, as previously mentioned.

Due to the above, I find a reasonable amount of compensation to award the landlords for cleaning, sanding, and garbage removal, considering the lack of a move-in and move-out condition inspection report, other independent evidence of the state and condition of the rental unit at the beginning of the tenancy, to be \$600.

*Window and screen replacement; broken toilet lid-*

In the absence of a move-in condition inspection report or any other evidence depicting the state and condition of the rental unit at the beginning of the tenancy, I find the landlord submitted insufficient evidence that the tenant broke the window or toilet lid during the tenancy. I therefore dismiss this portion of their claim.

*Rent for ½ February 2014-*

I find that the tenant provided inconsistent and insufficient notice that she was vacating the rental unit. In reviewing the evidence, the tenant sent the landlord a text message that she was leaving by February 15, 2014; however, subsequent text message communications provided differing dates.

Text message communication is not an acceptable method of delivery of documents recognized by section 88 of the Act, here, the tenant's notice she was vacating. I find the tenant was required to pay monthly rent on February 1, 2014, pursuant to the tenancy agreement terms, and that she failed to do so. I therefore grant the landlord's claim for unpaid rent for half of February, in the amount of \$750.

*Loss of rent revenue-*

Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term, here June 30, 2014, and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss, as required by section 7(2).

In this instance, I find the landlord failed to submit sufficient evidence that they took reasonable steps to minimize their loss of unpaid rent. I reached this conclusion due to the landlords' confirmation that they did not begin cleaning the rental unit until near the beginning of May 2014, as the landlord said she was busy. I interpreted this and the absence of advertisements to mean that there were no attempts to ready the rental unit in an effort to re-rent as soon as possible after the tenancy ended.

I therefore find the landlords submitted insufficient evidence to support their claim for loss of rent revenue and dismiss their claim of \$3000.

I award the landlords recovery of their filing fee of \$100.

Due to the above, I find the landlords are entitled to a monetary award of \$1852.17, comprised of the water bill for \$174.14, the hydro bill for \$228.03, costs for cleaning, repair, and garbage removal for \$600, unpaid rent for half of February 2014, for \$750, and the filing fee cost of \$100.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1852.17, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### ***Tenant's application-***

#### ***Emotional stress-***

I find the tenant submitted insufficient evidence that the landlords' actions caused her to suffer emotional stress, which was detrimental to her health. I was not provided medical records or any other records which documented the tenant's claim.

Additionally Residential Tenancy Branch Policy Guideline #16, suggests this to be a claim in tort, which is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim rises to that requirement.

I therefore dismiss her claim for \$1000.

*Travel expenses-*

Landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the act. Costs incurred that relate to choices made by the tenant after the tenancy ended in this case are not compensable under the Act. I therefore dismiss her claim for \$450 for bus passes as they are not expenses named under the Act.

I also dismiss the tenant's claim for recovery of the filing fee of \$50.

Due to the above, the tenant's application is dismissed, without leave to reapply.

Conclusion

The landlords' application has been partially successful as they are granted a monetary award and corresponding monetary order for the amount of \$1852.17.

The tenant's application is dismissed, without leave to reapply.

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: February 9, 2015

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Residential Tenancy Branch

