



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNSD, MND, 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; 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 18, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at a forwarding address provided by the Tenant at the end of the tenancy. The Landlord submitted a Canada Post receipt that corroborates this statement. 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 the Tenant did not appear at the hearing.

### Preliminary Matter #1

On the Application for Dispute Resolution the Landlord inserted the Tenant's surname in the place intended for the Tenant's first name and he inserted the Tenant's first name in the place intended for the Tenant's surname. At the outset of the hearing the Landlord applied to amend the Application for Dispute Resolution to correct this error.

As the Tenant knew, or should have known, that the Landlord simply made an administrative error when the Application for Dispute Resolution was completed, I find it reasonable to amend the Application to reflect the correct named of the Tenant.

### Preliminary Matter #2

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Although the Landlord's Application for Dispute Resolution does not provide an itemized list of his monetary claims, the Landlord did send the Tenant an email on August 17, 2014, in which he informs the Tenant of several deficiencies with the rental unit. On page four of the email the Landlord itemizes the cost of several repairs, which total \$2,851.87. This email was submitted in evidence.

At the hearing the Landlord stated that he is seeking \$2,851.87 in damages and that his application for a monetary Order of \$3,500.00 was merely an estimate. On page four of the aforementioned email the Landlord informed the Tenant he is not claiming compensation for "other repairs and painting", in the amount of \$772.65. At the hearing the Landlord confirmed that he is not seeking compensation for those costs at these proceedings.

As the Landlord had sent the Tenant an email informing him of the amount of compensation he is seeking and this email was submitted in evidence, I find that it is reasonable to consider the claims for compensation itemized on page four of the email of August 17, 2014. Anything not clearly specified on page four of this email will not be considered at these proceedings, even though the damage may have been referred to elsewhere in the email or the Landlord's evidence package.

I find that proceeding with the Landlord's claim for damages for anything not clearly itemized on page four of the email 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.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?  
Is the Landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

The Landlord stated that this tenancy began on March 01, 2006 and ended on July 29, 2014. He stated that at the end of the tenancy the rent was \$2,400.00 per month and that the Tenant paid a security deposit of \$1,050.00 on March 01, 2006.

The Landlord stated that a condition inspection report was completed at the beginning of this tenancy, a copy of which was submitted in evidence.

The Landlord stated that the Tenant would not agree to meet to inspect the rental unit at the end of the tenancy, although the Landlord made several attempts to arrange a meeting. He stated that he made one attempt to schedule a meeting for July 29, 2014 by telephone and he made subsequent attempts by email. Copies of emails related to the final inspection were submitted in evidence, in which the Tenant agreed that the Landlord could complete the report in his absence. The Landlord submitted a copy of an email to the Tenant, dated August 17, 2014, which served as a final condition inspection report and which listed several deficiencies with the rental unit.

The Landlord is seeking compensation, in the amount of \$231.53, for cleaning the rental unit. The Landlord submitted several photographs that show the rental unit required cleaning and a cleaning receipt in the amount of \$231.53.

The Landlord is seeking compensation, in the amount of \$101.11, for replacing light bulbs that had burned out or were missing; for replacing one ceiling light that was missing at the end of the tenancy; and for replacing several “missing items”. The Landlord submitted a receipt to show that he paid \$19.81 to replace the missing light, which included screws used to mount the new light. The Landlord submitted receipts to show that he paid \$28.99 to purchase replacement light bulbs.

The Landlord is seeking compensation, in the amount of \$18.98, for replacing a “fridge emblem”. He stated that the emblem cost \$16.95 plus tax. The Landlord submitted a photograph of the missing item. He submitted an email from his wife, in which she declares that she paid \$16.95 for the LG logo. A receipt was not submitted.

The Landlord is seeking compensation, in the amount of \$56.00, for replacing a shower head. He stated that the shower head, which was missing at the end of the tenancy, cost \$56.00 to replace. A receipt was not submitted.

The Landlord is seeking compensation, in the amount of \$2,444.25, to repair and paint the walls, ceilings, baseboards, and doors in the rental unit. The Landlord stated that there were 110 holes in the unit that needed to be repaired prior to painting. He stated that the holes were caused, in part, by incidental contact and from the Tenant installing a variety of fixtures that were not approved by the Landlord, such as bathroom cabinets, curtain rods, and blinds. The Landlord contends there was writing on the ceiling and that some doors needed to be repaired where the Tenant had installed coat hooks without the Landlord’s approval.

The Landlord submitted photographs that corroborate the need for repairs/painting. The Landlord submitted an estimate that corroborates the claim these repairs will cost \$2,327.86 plus GST. The Landlord stated that these repairs have been completed.

The Landlord stated that the rental unit was painted by the Tenant in 2006 and that the Landlord compensated the Tenant for the cost of the paint supplies. He stated that the Tenant painted the unit colours that were not approved by the Landlord, with the understanding that the walls would be returned to their original colours at the end of the tenancy. He stated that the walls were not returned to their original colours. He stated that approximately two years prior to the end of the tenancy the Tenant painted one of the bathrooms, without permission from the Landlord.

### Analysis

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.

On the basis of the Landlord's testimony and the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for cleaning the unit, which in these circumstances was \$231.00.

On the basis of the Landlord's testimony and the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the replace the missing ceiling lamp and to replace light bulbs which burned out during the tenancy. I therefore find that the Landlord is entitled to compensation for replacing these items, which in these circumstances was \$48.80.

I decline to consider the remainder of the Landlord's claim of \$101.11 for "missing items", as the Landlord did not clearly itemize the missing items on page four of the email of August 17, 2014. Although the Landlord refers to several missing items in that email, he does not specify the costs of those items and the Tenant is left to speculate regarding the details of the claim. I find this makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

On the basis of the Landlord's testimony and the photograph submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace the missing "fridge emblem" and shower head. 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. I find that the Landlord submitted insufficient evidence to establish that it cost \$18.98 to replace the "fridge emblem" or that it cost \$56.00 to replace the shower head.

In reaching this conclusion, I was heavily influenced by the absence of a receipt for the "fridge emblem" or shower head. In circumstances where receipts can be provided with reasonable effort, I find that the person claiming compensation has an obligation to provide the receipt. I therefore dismiss the claim for replacing the "fridge emblem" and shower head. I find the email from the Landlord's wife, in which she declares that she purchased a "fridge emblem", does not negate the need for a receipt when one is, or should be, readily available.

On the basis of the Landlord's testimony and the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the walls, doors, and ceiling that were damaged during the tenancy.

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.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that with the exception of one bathroom, the rental unit has not been repainted since 2006. I therefore find that the paint in the rental unit has long exceeded its life expectancy and that the Landlord is not entitled to recover the cost of repainting the unit.

Regardless of the age of the paint, the Landlord is entitled to compensation for repairing the damage to the walls and doors. In these circumstances the Landlord has provided a receipt for repairing and painting the rental unit. As the estimate does not break down the cost of repairing the unit and painting the unit, I find it reasonable to conclude that 1/3 of this bill was for repairs and 2/3 was for painting, as painting two coats typically takes longer than repairing walls. I therefore find that the Landlord is entitled to 1/3 of the repair bill and GST, which is \$814.75

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

The Landlord has established a monetary claim, in the amount of \$1,144.55, which is comprised of \$1,094.55 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,050.00 and deposit interest of \$36.29 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$58.26. In the event that 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: March 10, 2015

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Residential Tenancy Branch