



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, to retain security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 25, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail. The mail was sent to the forwarding address received by the landlord on August 22, 2014, when the tenant gave notice to end the tenancy. A Canada Post tracking number and a receipt were provided as evidence of service.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act. The tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$834.03 for damage to the rental unit?

May the landlord retain the security deposit?

### Background and Evidence

The tenancy commenced on November 1, 2008, rent was due on the first day of each month. A security deposit in the sum of \$350.00 was paid. A copy of the tenancy agreement and the move-in condition inspection report was supplied as evidence. The tenancy agreement was signed with a previous property management company.

The tenant gave the landlord written notice to end the tenancy effective September 8 or September 18, 2014. The notice included the tenant's forwarding address. The landlord obtained permission from the owner to end the tenancy effective September, 15, 2014 and the tenant paid rent to the date.

The landlord spoke to the tenant and asked that she meet to complete the condition inspection report at 1 p.m. on September 15, 2014. The tenant was told she could propose a different time as the tenant was not sure which day she would vacate the unit. When the tenant failed to

respond to calls from the landlord a notice of final opportunity to complete a condition inspection for September 15, 2014 at 1 p.m. was posted to the door on September 11, 2014.

The tenant did not attend the inspection and it was completed in her absence.

A copy of the move-out inspection report and 41 photographs of the unit supplied by the landlord as evidence showed a unit that was not fully cleaned. Walls required washing, some walls had nails in them, blinds were dirty, window ledges needed washing, garbage was left under the sink, the kitchen fan hood was dirty, the oven fan was not cleaned, windows were dirty, items were left in cupboards, the tub was not clean and, bathroom fan trim and doors were dirty. Photos of the carpet showed the need for cleaning. A towel rack in the bathroom was missing.

The landlord has made the following claim:

- \$382.15 cleaning;
- \$126.00 carpet cleaning;
- \$300.00 repair damage; and
- \$25.88 photographs.

The landlord supplied a detailed invoice for the cleaning costs, including small sums for cleaning products used. Walls were washed; everything was coated with nicotine. The addendum signed by the parties had required the tenant to smoke outside but she had smoked in the unit resulting in nicotine residue left on surfaces in the unit. The stove top, oven blinds, bathroom, outlet covers, light fixtures, heat registers, kitchen and laundry room were cleaned.

A carpet cleaning invoice issued on September 18, 2015 was supplied as evidence.

A September 22, 2015 invoice was supplied for the cost of repairs. The invoice detailed costs for repair of large screw and nail holes (excluding small holes), repair of gouges in the walls, replace the towel rack and removal of a damaged mirror installed by the tenant.

The landlord supplied an invoice for the cost of the photographs submitted as evidence.

#### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of the tenant who was served with notice of this hearing, I find that the landlord is entitled to the costs claimed, less a nominal sum of \$20.00 for the towel rack. Residential Tenancy Branch policy suggests that depreciation be applied to items that require replacement; what I find is a reasonable stance. Therefore, I have deducted \$20.00 for the cost of the towel rack, a nominal sum that represents an item that was at least six years old and likely near the end of the expected useful life of such an item.

I find that the landlord has proven, on the balance of probabilities, that the tenant failed to leave the rental unit reasonably clean and undamaged, as required by section 37(2) of the Act. From the evidence before me there was the need for cleaning, particularly due to the damage caused by smoking in the unit.

The landlord has claimed the cost of photographs. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is dismissed. The landlord is at liberty to claim the cost of photographs as a business expense.

Therefore, the landlord is entitled to \$382.15 for cleaning; \$126.00 for carpet cleaning and \$280.00 for repairs.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's \$350.00 security deposit plus interest of .88 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$487.27. 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.

### Conclusion

The landlord is entitled to costs claimed less \$20.00 for the towel rack.

The landlord is entitled to filing fee costs.

The landlord may retain security deposit plus interest in partial satisfaction of the claim.

This decision is final and binding and 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: May 01, 2015

---

Residential Tenancy Branch

