



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord: MNSD, MNDC, MND, FF  
Tenant: MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties.

**The tenant** filed their application October 22, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order: compensation for damage or loss – Section 67
2. An Order to recover the filing fee for this application (\$50) - Section 72

**The landlord** filed their application November 05, 2014 pursuant to the *Residential Tenancy Act* (the Act), subsequently amended for Orders as follows:

1. A Monetary Order: compensation for damage to the unit / damage or loss – Section 67
2. An Order to retain the security deposit to offset their claim - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and relevant testimony in respect to their claims and to make *relevant* prior submission of evidence to the hearing and fully participate in the conference call hearing. Both parties acknowledged receiving the evidence of the other. The parties were apprised that despite all of their evidence only *relevant* evidence would be considered in the Decision. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?  
Is the tenant entitled to the monetary amounts claimed?

*Each party bears the burden of proving their respective claims.*

### **Background and Evidence**

The tenant clarified that they sought the return of their security deposit, as well as one month's rent because the landlord ended the tenancy by way of their one month's *termination notice*; and, an additional one month's rent - as if the landlord had given the tenant a *2 Month Notice to End Tenancy for Landlord's Use of Property*.

The landlord sought compensation for cleaning, damages to the unit, and for over holding of the rental unit by the tenant. The landlord filed their application within 2 weeks of receiving the tenant's application for dispute resolution, in which the tenant included their forwarding address.

The undisputed evidence in this matter is as follows. The tenancy began February 16, 2014 as a written tenancy agreement - submitted into evidence. The tenant vacated October 02, 2014 pursuant to an e-mail from the landlord of August 30, 2014 in which the landlord advises the tenant that they are, "*terminating the residential Tenancy Agreement*" September 30, 2014. The tenant testified that they did not contest the landlord's termination notice and determined to vacate as asked by the landlord. At the outset of the tenancy the landlord collected a security deposit in the amount of \$562.00 which the landlord retains in trust. During the tenancy the payable rent was in the amount of \$1200.00 due in advance on the 1st day of each month. Both parties provided evidence that at the beginning of the tenancy there was no move in inspection conducted. Specifically, the landlord provided evidence that a *move in* inspection was not completed as the rental, "unit was in excellent condition". The tenant provided testimony that at the end of the tenancy they chose not to attend the *move out* inspection as was mutually arranged by the parties. The landlord chose to conduct a move out inspection on their own, accompanied by a witness whom provided a signed statement as to their observations. The landlord provided evidence that they subsequently sent their Condition Inspection Report to the tenant by registered mail in accordance with the Act, and that it was returned as *unclaimed*.

The tenant testified that the landlord notified them they were terminating the tenancy, without stipulating a reason. Although it was unexpected and inconvenient the tenant chose to not contest the landlord's notice and accepted that the tenancy would end at the end of September 2014. The tenant claims that they had to quickly find new accommodations and ultimately did so but needed extra time to clean the unit. The tenant asked for 2 extra days to vacate, with which the landlord agreed.

The landlord testified acknowledging that it was improper and contrary to the Act to assert their termination of the tenancy, but that the tenant ultimately agreed to vacate after they received the *termination notice*. The landlord claims that the parties achieved a Mutual Agreement to end the tenancy. The tenant disputes a Mutual Agreement ever existed – and neither party provided evidence of such an agreement: more specifically, a written and signed Mutual Agreement to end the tenancy.

The tenant testified that they agreed with the landlord's claim for carpet cleaning in the amount of \$156.50, 2 new doors in the amount of \$106.40 and the charge for an entrance door key tag / fob in the amount of \$25.00.

The parties agreed that the unit included a total of 3 fobs. The tenants claim they left 2 fobs. The landlord testified the tenant left only 1 of 3 fobs on the counter of the unit. The landlord sought compensation for a garage door fob and an entrance fob in the amount of \$100.00. The landlord relied on their condition inspection report which states 2 fobs were returned, albeit 1 broken. However, on their Document #10 documentation the landlord states "*there were no fobs left*". Evidence from the landlord's witness statement of October 02, 2014 states, "*The condominium was left unlocked, keys were left on the kitchen counter, however there were no fobs left*". The parties discussed and disputed the contrasting evidence in respect to these items to no avail.

The landlord claims the rental unit was left unclean and damaged. The landlord provided a series of photographs depicting blinds appearing as *marked*, or *blotchy*, which the landlord claims appeared to have coffee stains. The tenant testified that the blinds were unclean from the start. The landlord also provided a photograph of the oven, which the tenant acknowledged was not cleaned. The landlord also provided photographs of a hole in a door, and apparent scratches to the walls, baseboards, and thresholds of the unit, which the landlord claims appeared to result from the tenant's dog, and which the tenant did not contest. The landlord provided an invoice for wall reparation, door installation, and painting; as well as invoices for paint and refinishing supplies. They acknowledged that a charge of \$80.00 in the contractor invoice for removal and installation of a door seal did not apply, and was orally withdrawn.

The landlord's claim for the tenant's over holding of the unit is for \$40.00 per day for a total of \$80.00. The tenant testified that had the landlord not agreed to the extension they may not have factored an extension into their plans to accommodate the landlord's termination notice.

## **Analysis**

All references to the relevant legislation or policy guidelines can be accessed from the Residential Tenancy Branch website at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

It must be noted that each party is responsible to support their claims. I have reviewed and considered all of the *relevant* evidence in this matter. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows. Moreover, the parties' respective claims for damages and/or loss are subject to their statutory duty pursuant to **Section 7** of the Act.

*Landlord's claim*

I find that the landlord has not provided sufficient evidence to support their entire claim for cleaning in the amount of \$210.00. None the less, I find the landlord has provided enough evidence they are owed a quantum for cleaning the kitchen oven and for wall cleaning, and I grant the landlord **\$100.00** in this respect. I accept the landlord's evidence that the rental unit was left damaged and that the landlord is owed for refinishing supplies totalling **\$131.69**, and contracted repair services in the amount of **\$636.50** – from which I have deduct \$84.00 (\$80.00 and tax).

I grant the landlord the parties' agreed amount for carpet cleaning costs and broken door replacement cost in the sum of **\$262.90**.

I find the landlord's own evidence respecting the rental unit fobs is ambiguous, contradictory, and effectively unreliable. I prefer the tenant's evidence in respect to this claim, that they returned 2 fobs. As a result, I grant the landlord **\$25.00** for replacement of 1 missing front door key fob.

**Section 44** of the Act prescribes how a tenancy ends. It states that the landlord may issue a Notice to End for a variety of events utilizing the respective form in accordance with **Section 52** of the Act. The evidence is clear that the landlord asserted upon the tenant an illegal notice to terminate the tenancy and the tenant simply determined to vacate in response. I find that had the tenant simply over held the rental unit after giving the landlord a legal notice to vacate under **Section 45**, that the landlord may have had a valid claim of compensation for any over holding by the tenant. However, in this case the tenant asked for 2 extra days in order to *accommodate the landlord's notice* issued for the benefit of the landlord. It was available to the landlord to decline the request, but they did not. I find that the landlord cannot say that the tenant over held the unit – the tenant occupied the rental unit an additional 2 days with the knowledge and allowance of the landlord. As a result I **dismiss** the landlord's claim of \$80.00 for over holding the rental unit.

*Tenant's claim*

I find that after the tenant received the landlord illegal *termination notice* it was available to them to file for dispute resolution, but they did not. The tenant clearly explained that they chose not to contest the landlord's determination, and to vacate. None the less, I accept the tenant's testimony that they did so to accommodate the landlord's interest to end the tenancy, and not in their own interest. I accept the tenant's position that they had to act quickly after being presented with an unexpected inconvenience. As a result, I find it appropriate to compensate the tenant with a nominal award in the amount of **\$600.00**.

**Section 51(1)** of the Act clearly states that a tenant who receives a notice to end a tenancy under **Section 49** [*landlord's use of property*] is entitled to receive from the landlord the prescribed compensation equivalent to one month's rent. In this matter the tenant did not receive such a notice and therefore they are not entitled to the associated compensation. As a result, I **dismiss** this portion of the tenant's claim.

**Section 38 (1)** of the Act, respecting the administration of deposits, states that if the landlord does not act within 15 days of receiving the tenant's forwarding address the tenant is entitled to double their deposit. I find that within 15 days of receiving the tenant's forwarding address the landlord acted by applying for dispute resolution to retain the deposit, as required by this section of the Act. As a result, I find the tenant is not entitled to the doubling provisions afforded by Section 38(6) of the Act, and I **dismiss** this portion of the tenant's claim.

***Calculation for Monetary Order***

As both parties were partially successful in their claims they are respectively entitled to recover their filing fee: which effectively cancel out. As the landlord has been awarded compensation the tenant's security deposit is offset herein as follows.

landlord's award for cleaning	\$100.00
landlord's award for paint and finishing supplies	\$131.69
landlord's award for damages / repairs	\$636.50
landlord's award for agreed carpet cleaning and replacement door(s)	\$292.90
landlord's award for key fob	\$25.00
<i>Minus tenant's award</i>	- \$600.00
<b>Landlord's net award</b>	<b>\$586.09</b>
<i>Minus tenant's deposit held in trust by landlord</i>	- \$562.00

Monetary Order to landlord	\$24.09
----------------------------	---------

**Conclusion**

The parties' respective applications, in part, have been granted and the balances of their claims are dismissed, without leave to reapply.

**I Order** that the landlord may retain the tenant's security deposit in the amount of \$562.00 and **I grant** the landlord a Monetary Order under Section 67 of the Act for the balance of their award in the amount of **\$24.09**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: May 20, 2015

---

Residential Tenancy Branch

