



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, 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 unpaid rent or utilities; 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 female Agent for the Landlord stated that on September 11, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail. She stated that the packages were mailed to a forwarding address provided by the Tenant, which is the service address noted on the Application.

The Tenant stated that the Applications for Dispute Resolution, the Notices of Hearing, and evidence the Landlord wishes to rely upon as evidence were received at the forwarding address provided, which is a business address. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

The female Agent for the Landlord stated that on March 17, 2015 an amended Application for Dispute Resolution and additional evidence the Landlord wishes to rely upon as evidence was sent to the Tenant at the same address, via registered mail. She stated that this package was returned by Canada Post with a notation that there is "no such address". The Tenant stated that she did not receive these documents.

The Tenant stated that the Tenant's service address on the Application for Dispute Resolution is correct and that the Tenant is still receiving mail that is forwarded from that address. At the hearing on March 31, 2015 the Tenant provided a new residential address.

On the basis of the undisputed evidence, I find that the documents that were served to the Tenant by mail on March 17, 2015 were not delivered by Canada Post. This service issue appears to be the result of an error by Canada Post, which was not the fault of the Landlord or the Tenant.

The Landlord was given the opportunity to proceed with the hearing on March 31, 2015, with the understanding the documents mailed on March 17, 2015 would not be considered or to request an adjournment for the purposes of reserving the evidence that was not properly delivered by Canada Post. The female Agent for the Landlord opted to request an adjournment. The request for an adjournment was not opposed by the Tenant. As the documents were not delivered as a result of a Canada Post error, I find it was reasonable to grant the adjournment.

The hearing was reconvened on May 20, 2015 and was concluded on that date. The Tenant did not attend the hearing until approximately 19 minutes after the scheduled start time of the hearing. All of the issues discussed in the first 19 minutes of the hearing were revisited in the presence of the Tenant.

At the hearing on May 20, 2015 the female Agent for the Landlord stated that the documents that were served to the Tenant by mail on March 17, 2015 were re-served, via registered mail, on March 31, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

In the monetary breakdown on page one of the original evidence package, the Landlord outlined claims for damages, utility charges, and the filing fee which total \$1,888.49. This is consistent with the original amount of the monetary claim of \$1,838.49. In this breakdown of claims the Landlord has claimed \$177.00 for "general repairs".

In the monetary breakdown on page three of the evidence package submitted to the Residential Tenancy Branch on March 18, 2014, the Landlord outlined claims for damages, utility charges, and the filing fee which total \$2,124.34. This is consistent with the amount of the amended monetary claim. In this breakdown of claims the Landlord has claimed \$133.05 for "general repairs". I find it reasonable for the Tenant to conclude that the items outlined on page three of the second evidence package are the claims being made by the Landlord and those are the claims that will be considered at these proceedings.

The Tenant stated that she did not understand the nature of the claim of \$133.05 for "general repairs".

The male Agent for the Landlord stated that the claim of \$133.05 included a claim to repair the screen door and to repair an exterior light.

The female Agent for the Landlord argued that the Tenant would have understood the claims for "general repairs" if she had viewed page eleven of the original evidence

package, which declares the Landlord is claiming a total of \$1,189.74. All of these claims on page eleven, with the exception of items #2 and #6, were itemized separately on page three of the second package and, presumably, were not included in the claim for "general repairs".

On page eleven of the original evidence package there is a claim of \$72.80 for replacing the exterior light (item #2) and a claim of \$39.20 for repairing the screen door (item #6). These claims total \$112.00 so it is not clear to me how the Tenant would have understood that the claim of \$133.05 for "general repairs" referred to these two claims.

I find that the Landlord has not provided the Tenant with sufficient information about the claim of \$133.05 for "general repairs" on page three of the second evidence package. Even after listening to the testimony of the Agent for the Landlord and carefully reviewing the documents submitted in evidence, it is not entirely clear to me how the Landlord has arrived at the claim of \$133.05 for "general repairs".

Section 59(2)(b) of the *Residential Tenancy Act (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. I find that the Landlord's Application for Dispute Resolution did not clearly explain the claim for "general repairs" and I refuse to consider that portion of the Landlord's claim. I find it would be unfair to the Tenant to proceed with this particular claim as the absence of details makes it difficult, if not impossible, to prepare a response to the claim for "general repairs".

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid utilities and damage to the rental unit?

Is the Landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

The Landlord and the Tenant agree that they had a fixed term tenancy agreement, the fixed term of which ended on August 31, 2014 and that the rental unit was vacant on August 28, 2014.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$700.00.

The Landlord and the Tenant agree that a condition inspection report was completed on September 01, 2012 and August 28, 2014, a copy of which was submitted in evidence. The parties agree that the Tenant did not agree with the content of the report that was completed on August 28, 2014.

The Landlord is seeking compensation, in the amount of \$226.26, for water charges incurred during the tenancy. The Landlord and the Tenant agree that the Tenant was required to pay 2/3 of the costs of water charges incurred during the tenancy.

The Landlord submitted a water bill for the period between March 11, 2014 and July 09, 2014, in the amount of \$237.60, \$11.67 of which the Tenant is not required to pay. The female Agent for the Landlord stated that the Tenant has not paid the Tenant's portion of the bill, which the Landlord contends is \$169.45. The Tenant stated that she does not recall if this bill was paid and that she does not dispute the Landlord's claim that the Tenant has not paid the Tenant's portion of the bill.

The Landlord submitted a second water bill, dated November 14, 2014, for the period between July 10, 2014 and November 07, 2014, in the amount of \$181.49, \$30.00 of which the Tenant is not required to pay. The female Agent for the Landlord stated that the Tenant has not paid the Tenant's pro-rated portion of the bill, which the Landlord contends is \$56.81. The Tenant stated that the Tenant has not paid the Tenant's portion of the bill.

I note that the Landlord has noted on the water bill that the \$169.45 is 75% of the bill.

The Landlord is seeking compensation, in the amount of \$353.68, for cleaning the rental unit. The female Agent for the Landlord stated that the rental unit was not left in reasonably clean condition at the end of the tenancy. The Landlord submitted photographs of the rental unit, which were taken at the end of the tenancy.

The Tenant stated that she cleaned the rental unit at the end of the tenancy. She stated that the photographs of the rental unit fairly represent the cleanliness of the unit at the end of the tenancy. She stated that, after viewing the photographs of the rental unit, she recognizes there were some areas that were not left in reasonably clean condition.

The Landlord submitted an invoice from a professional cleaning company, in the amount of \$196.88. This invoice indicates the Landlord was charged for 7.5 hours of cleaning at the rental unit on September 03, 2014.

The Landlord submitted a receipt from a company owned by the owner of the residential property, in the amount of \$156.80. This receipt indicates the Landlord was charged for 4 hours of cleaning at the rental unit, although the date of the cleaning is not recorded on the invoice. The female Agent for the Landlord stated that the company owned by the owner of the rental unit was hired because the Landlord believed the first company did not adequately clean the rental unit.

The Tenant stated that she believes the amount of cleaning completed at the rental unit was excessive, given the amount of cleaning she had done. She believes the additional cleaning could have been completed in about 2 hours. She stated that the owner of the rental unit, whom she does not trust, lived on the residential property and she contends it is a conflict of interest for the Landlord to use the owner's company. The female Agent for the Landlord stated that the Landlord has used the owner's company for a variety of reasons and have found it to be a reputable company.

The Landlord is seeking compensation, in the amount of \$138.60, for cleaning the carpets in the rental unit. The Landlord and the Tenant agree that the tenancy agreement required the Tenant to have the rental unit professionally cleaned at the end of the tenancy. The Tenant stated that she personally cleaned the carpet at the end of the tenancy, with the use of a rented carpet cleaner, however she did not have it cleaned by a professional carpet cleaning service.

The Landlord submitted a copy of an invoice for cleaning the carpet, which indicates the Landlord paid \$100.00 to clean the carpet in the rental unit, \$50.00 to clean the carpet in another property not associated to this tenancy, and \$40.00 to deodorize the carpet in the rental unit. The technician appears to have written that the deodorizing was necessary and that there was a smell from previous (word intelligible).

The Tenant stated that there was no need to deodorize the carpet, as the carpet did not smell. The male Agent for the Landlord stated that he does not recall if the carpet smelled at the end of the tenancy and he did not note that it smelled on the condition inspection report.

The Landlord is seeking compensation, in the amount of \$431.10, for removing, cleaning, and hanging drapes in the rental unit. The Landlord submitted a copy of an invoice from a company owned by the owner of the rental unit. \$313.50 of this invoice is for the cost of cleaning the drapes and the remaining \$117.60 is for the cost of removing and re-hanging the drapes. The Landlord submitted a copy of a receipt from a laundry service for the \$313.50 cleaning cost.

The Tenant stated that:

- most of the drapes in the rental unit were removed shortly after the tenancy began;
- the drapes were stored on a shelf in the rental unit for the remainder of the tenancy;
- prior to the tenancy ending the owner of the rental unit told the Tenant that the Tenant should not wash the drapes;
- prior to the tenancy ending the owner of the rental unit told the Tenant that the Tenant should rehang the drapes;
- that the Tenant did not clean the drapes prior to hanging them; and
- she does not trust the invoice for removing and re-hanging the drapes, as the owner of the rental unit owns the company that hung the drapes.

The male Agent for the Landlord stated that the drapes that had been removed by the Tenant needed to be cleaned and ironed. The Landlord submitted photographs of some of the drapes in the rental unit, which show that the drapes are wrinkled. The photographs, in my view, do not establish that the drapes are dirty.

The Landlord is also seeking compensation, in the amount of \$313.60, for removing and repairing curtains. The Landlord submitted a copy of an invoice from a company owned

by the owner of the rental unit. \$196.00 of this invoice is for the cost of supplies and the remaining \$117.60 is for the cost of removing and re-hanging the drapes. The Landlord submitted a copy of a receipt from a window covering company in the amount of \$196.00.

The female Agent for the Landlord stated that, after viewing the two invoices for removing, repairing, and cleaning the drapes, she believes that the cost of removing the drapes has been duplicated. She therefore reduced the amount of the claim for repairing the drapes by \$117.60.

The male Agent for the Landlord stated that the drapes were damaged when they were removed by the Tenant. He stated that he can no longer recall specifically how the drapes were damaged, but he believes they were missing parts needed to open and close the drapes. The Tenant stated that she does not know if the drapes were damaged but she is willing to pay for the cost of repairing any damage that occurred during her tenancy.

The Landlord is seeking compensation, in the amount of \$438.95, for disposing of property left in the rental unit at the end of the tenancy. The male Agent for the Landlord stated that a significant amount of property was left at the rental unit at the end of the tenancy. The Tenant acknowledged that a few items belonging to the Tenant were left at the rental unit.

The Landlord submitted photographs of the rental unit, which were taken at the end of the tenancy. The male Agent for the Landlord stated that the rack in the photograph on page 23; the book shelf in the photograph on page 25; and the miscellaneous shelving in the photograph on page 36 were all left in the rental unit by the Tenant. The Tenant stated that all of the shelving was in the rental unit at the start of the tenancy, most of which was in the basement. The male Agent for the Landlord stated that he does not recall seeing any of the shelving units prior to the start of the tenancy.

The male Agent for the Landlord stated that the hand pump that can be seen in the photograph on page 32 was left in the rental unit by the Tenant. The Tenant stated that this pump was attached to the deck at the start of the tenancy and did not belong to the Tenant.

The male Agent for the Landlord stated that the miscellaneous items that can be seen in the photographs on page 33 and 34 were left under the deck of the rental unit by the Tenant. The Tenant stated that the owner of the rental unit lived on the residential property and also stored lumber and miscellaneous items under the deck. She stated that she believes the Tenant removed all of the lumber they had stored under the deck. The Landlord does not dispute that the owner of the rental unit stored property under the deck.

The male Agent for the Landlord stated that the miscellaneous items that can be seen in the photograph on page 37 were left in the basement by the Tenant. The Tenant stated

that the owner of the rental unit also stored property and that none of the items in the photograph on page 37 belong to the Tenant.

The male Agent for the Landlord stated that the dresser and bags of garbage that can be seen in the photograph on page 38 were left outside the rental unit by the Tenant. The Tenant stated that the dresser was removed by a friend and the bagged garbage was removed by the Tenant after the photographs were taken by the Landlord on August 28, 2014. The male Agent for the Landlord stated that he was not present when the property was disposed of by the Landlord so he cannot dispute the testimony of the Tenant.

The Tenant agrees that the following personal items were left in the rental unit at the end of the tenancy:

- the broken pot that can be seen in the photograph on page 25;
- the toilet brush that can be seen in the photograph on page 27;
- the items under the sink that can be seen in the photograph on page 28;
- the pots and the patio chair that can be seen in the photograph on page 32;
- the barbecue that can be seen in the photograph on page 33;
- the baby carriage that can be seen in the photograph on page 36; and
- the chair made from a stump that can be seen in the photograph on page 37.

The Landlord submitted two invoices from the company owned by the owner of the rental unit, which indicates the Landlord was charged \$156.80 in labour for two trips to the dump.

The Landlord submitted one weigh slip from the dump that indicates the Landlord was charged \$85.18 in disposal fees. Although the information on my copy of the weigh slip is not clearly legible, the female Agent for the Landlord stated that the weigh slip charge was for 480 kg of waste.

The Landlord submitted a second weigh slip from the dump that indicates the Landlord was charged \$196.97 in disposal fees. Although the information on my copy of the weigh slip is not clearly legible, the female Agent for the Landlord stated that the weigh slip charge was for 1,110 kg of waste.

The Landlord is also seeking compensation, in the amount of \$39.20, for paint supplies used to repair holes in the wall from the Tenant mounting a television to the wall. The Tenant stated that the Tenant repaired the holes in the drywall and touched up the repair with paint at the end of the tenancy. The female Agent for the Landlord stated that the Landlord did not submit a photograph of the wall that required repair at the end of the tenancy.

## Analysis

On the basis of the undisputed testimony provided at the hearing, I find that the Tenant was required to pay 2/3 of the water bills. I note that this is inconsistent with the amount claimed by the Landlord, which appears to be 75% of the water bill. As I am unable to determine whether the Landlord made a mistake on the documents submitted in evidence when they claimed for 75% of the water bill or whether the Agent for the Landlord made a mistake when she testified that the Tenant was required to pay 2/3 of the water bill, I am unable to conclude that the Tenant was required to pay more than 2/3 of the water bill.

As the Tenant does not dispute the Landlord's claim that the Tenant has not paid the Tenant's portion of the water bill for \$237.60 (less \$11.67), I find that the Tenant owes 2/3 of this bill, which is \$150.62.

I find that the Tenant is required to pay the Tenant's portion of the November 14, 2014 water bill for the period between July 10, 2014 and August 31, 2014, which is the end of the fixed term of the tenancy, which is 52 days. As the water bill is for the period between July 10, 2014 and November 07, 2014, which is 120 days, I find that the Tenant must pay their portion of 52/120 of the bill. 52/120 of the \$151.49 water charges is \$65.64. 2/3 of the \$65.64 is \$43.76. I therefore find that the Tenant must pay \$43.76 of the pro-rated water bill dated November 14, 2014.

When making a claim for damages to a rental unit, a landlord bears the burden of proving the 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 landlord took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. On the basis of the photographs of the rental unit, I find that the rental unit was not left in reasonably clean condition. In my view, some areas required additional cleaning, such as behind appliances, the floor near some baseboards, a cupboard under the sink, and the washer and dryer. I therefore find that the Tenant did not comply with section 37(2)(a) of the *Act* and that the Landlord is entitled to cover the costs of rendering the unit reasonably clean.

I concur with the Tenant's submission that the cleaning costs claimed are excessive. On the basis of the photographs submitted in evidence, I find that it would not have taken 11.5 hours to render the rental unit reasonably clean. I find it reasonable to conclude that the first company hired to clean the rental unit left rendered the rental unit reasonably clean and I therefore grant the Landlord compensation for those costs, in the amount of \$196.88. I dismiss the Landlord's claim for the cleaning costs charged by the owner of the property's company, as the photographs simply do not support the claim that an additional four hours of cleaning was required.



On the basis of the undisputed evidence, I find that the tenancy agreement required the Tenant to have the carpets professionally cleaned at the end of the tenancy and that the Tenant did not comply with this term of the tenancy agreement. I therefore find that the Landlord is entitled to recover the cost of having the carpet professionally cleaned at the end of the tenancy, which was \$105.00, including tax.

I find that the Landlord has submitted insufficient evidence to establish that the carpet smelled at the end of the tenancy and I therefore find that the Tenant is not obligated to pay the \$40.00 cost of deodorizing the carpet. In reaching this conclusion I was heavily influenced by the Tenant's testimony that the carpet did not smell; by the fact the male agent for the Landlord, who inspected the unit at the end of the tenancy, did not recall if the carpet was smelled, and by the fact the condition inspection report does not indicate the carpet smelled at the end of the tenancy.

In determining whether the carpet smelled at the end of the tenancy, I placed little weight on the technician's note that the carpet smelled. I placed little weight on this observation, in part, because it is not clear how the technician would know the source of the smell or what he believe caused the smell.

I placed little weight on the observation of the carpet cleaning technician, in part, because the carpet appears to have been cleaned on November 28, 2014. This is almost three months after the end of the fixed term of the tenancy and any smell present in the carpets at that time, in my view, could have developed after the tenancy ended.

A tenant's obligation under section 37(2)(a) of the *Act* includes leaving the drapes clean and undamaged. On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant did not ensure the drapes were not wrinkled and that they were not damaged. I therefore find it reasonable that the Landlord removed and cleaned the drapes to remove the wrinkles and I find that the Landlord is entitled to compensation for the costs associated to removing and cleaning the drapes. I also find the Landlord is entitled to compensation for repairing the drapes that were apparently damaged when they were removed and stored by the Tenant.

I find that the invoice of \$431.10 for removing/cleaning the drapes is reasonable, given that only \$117.60 is for the time it took the owner's company to remove the drapes and that the bill of \$196.00 for materials to repair the blinds is reasonable. Apart from the Tenant's testimony that she does not trust the owner of the rental unit, she submitted no evidence to establish the charges are unreasonable. I therefore find that the Tenant must pay \$431.10 for cleaning/removing the drapes and \$196.00 for supplies used to repair the drapes.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant owned the shelving units left at the rental unit, the miscellaneous items stored in the basement which the Tenant stated do not belong to the Tenant, and the miscellaneous items stored under the deck that the Tenant does not believe belong to the Tenant. In

reaching this conclusion I was heavily influenced by the undisputed evidence that the owner of the rental property also stored items under the deck and in the basement. When two parties share storage space the onus is on the Landlord to establish that property left in the storage space belongs to the Tenant and, in my view, the Landlord has failed to meet that burden of proof. I therefore find that the Tenant is not obligated to pay for the cost of disposing of these items.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord did not have to dispose of the bagged garbage and the dresser that can be seen in the photograph on page 38. I therefore find that the Landlord is not entitled to compensation for disposing of these items.

On the basis of the testimony of the Tenant, I find that the Tenant failed to comply with section 37(2)(a) of the Act when the Tenant failed to remove the following personal items from the rental unit:

- several broken pots;
- miscellaneous cleaning items;
- a patio chair;
- a barbecue;
- a baby carriage; and
- a chair made from a stump

I find that the Landlord is entitled to compensation for removing the aforementioned items. The evidence shows that the Landlord was charged \$156.80 for the labour costs of making two trips to the dump. In my view, the aforementioned items could have been removed in one trip and I find that the Landlord is therefore entitled to recover the cost of one trip, which is \$78.40.

The evidence shows that the Landlord was charged \$282.75 to dispose of 1,590 kg of waste, which is \$5.62 per kg. In my view, the aforementioned items would have weighed approximately 75 kgs and I find that the Landlord is entitled to recover the cost of dumping only those items, which I estimate to be \$42.15.

I find that the Landlord submitted insufficient evidence to establish that the wall where the Tenant had mounted a television was not properly repaired by the Tenant at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's claim repairs were required or that refutes the Tenant's testimony that the wall was repaired by the Tenant. I therefore dismiss the Landlord's claim for paint supplies for repairing this wall.

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 \$1,293.73, which is comprised of \$194.38 in utilities, \$1,049.35 in damages/cleaning costs, and \$50.00 in compensation for the fee paid to file 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 \$700.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$593.73. 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: May 21, 2015

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Residential Tenancy Branch

