



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the security deposit and to recover the filing fee for this proceeding.

The Landlord said his agent served the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about November 15, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation and if so how much?
3. Is there a loss or damage and if so how much?
4. Are the Landlords entitled to compensation for the loss or damage and if so how much?
5. Are the Landlords entitled to retain the security deposit?

### Background and Evidence

This tenancy started in April, 2009 and the last tenancy agreement was completed on October 1, 2012 as a month to month tenancy. Rent at the end of the tenancy was \$750.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$290.00 at the start of the tenancy. The tenancy ended on September 1, 2014.

The Landlord said he did not complete a move in or move out condition inspection report when he took over the rental complex, but he did submit photographs to show the damage the Tenants did to the unit. The Landlord said his total claim is \$7,229.68. His claim includes 113.5 hours of cleaning and repair work at \$15.00 per hour, with about

50 % of the time being used for cleaning, \$220.00 for paint and supplies, \$51.50 for dump charges, \$2,560.00 for replacement of the carpet at 25% depreciation and \$820.00 for the labour to install the carpet. As well the Landlord requested \$750.00 of lost rental income for each month of September and October, 2014. The Landlord said the unit was in such poor condition that they were unable to rent it until November 1, 2014.

The Landlord also requested to retain the Tenants' security deposit as partial payment for the unpaid rent and lost rental income and to recover the filing fee of \$100.00 for this application

The Landlord said he is a commercial Landlord and normally does a move in and move out condition inspection but in this case it was not done. The Landlord said he understands that the move in inspection establishes a base to measure any damage that is caused during a tenancy and if there is no base line it is difficult to measure the amount of damage.

The Tenant said the unit was in poor condition on move in. The unit was not painted, the carpets were in poor condition, there were problems with the closet doors and the framing around the front door was broken. The Tenant said the unit was in poor condition and there were repairs that were needed to be done that were not completed.

The Tenant continued to say they did not damage the unit, but they left the unit in an unclean condition and they were responsible for cleaning the unit. As well the Tenant said they gave verbal notice to the Landlord July 1, 2014, to end the tenancy on August 1, 2014. The Tenant said he understood it was not written notice. The Landlord said the verbal notice to end the tenancy was given on July 22, 2014 for August 1, 2014. The Tenant said they moved out on September 1, 2014.

In closing the Tenant said maintenance in the rental complex had slacked off towards the end of the tenancy and he believed there was favouritism between tenants and the Landlord. The Tenant said he is responsible for the cleaning but they did not cause any damage as the unit was damaged at the start of the tenancy.

The Landlord said they are good landlords and clean up many rental complexes that they purchase. The Landlord said this unit is one of the messiest rent units he has ever seen. The Landlord said they spent 60 days cleaning and repairing this unit and they are requesting to be compensated for their work.

### Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspection reports to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said he did not do a move in condition inspection report and he did not submit any other evidence to establish the condition of the rental unit at the start of the tenancy; I find the Landlord is unable to establish the condition of the rental unit at the start of the tenancy. Consequently the Landlord has not established grounds to prove damage to the unit or if there is damage the amount of damage attributed to this tenancy. I find that the Landlord has not established proof that the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the cleaning of the rental unit, both parties agreed the unit was left in an unclean state. Consequently I find for the Landlord with respect to cleaning and I award half the labour hours ( $113.5 \text{ hours} \times .5 = 56.75 \text{ hours}$ ) to the Landlord. I award 56.75 hours at \$15.00 per hour for cleaning the unit in the amount of \$851.25. Further I award the Landlord the dump cost or \$51.50 for hauling garbage.

Further as the Tenant did not give proper written notice to the Landlord to end the tenancy, pursuant to section 45 of the Act I award the Landlord the unpaid rent for September, 2014 in the amount of \$750.00. I also find the Landlord's claim for lost rental income for October, 2014 in the amount of \$750.00 is unproven as the Landlord was unable to prove the Tenant cause damage to the rental unit which may have delayed the renting of the unit until November, 2014.

With regard to the Tenants' security deposit; pursuant to section 67 of the Act I order the Landlords to retain the Tenants' security deposit in the amount of \$290.00 as partial payment of the unpaid rent for September, 2014.

As well, as the Landlords were partially successful in this matter I order the Landlords to recover the filing fee of \$100.00 from the Tenants.

The Landlord will receive a monetary order as below:

September, 2014 rent	\$ 750.00	
Cleaning costs	\$ 851.25	
Dump fees	\$ 51.50	
Filing fee	\$ 100.00	
Sub total		\$1,752.75
Less Security Deposit	\$ 290.00	
Sub total		\$ 290.00
Amount owing		\$1,462.75

### Conclusion

A Monetary Order in the amount of \$1,462.75 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 30, 2015

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Residential Tenancy Branch

