



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **FINAL DECISION**

### Dispute Codes:

**MNDC, MNR, MNDC, MNSD, FF**

### Introduction

This was a cross-application hearing.

Both parties were present at this initial and final hearing. At the start of each hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

On June 11, 2015 the parties were all affirmed.

### Preliminary Matters

At the start of the reconvened hearing the tenant testified that she submitted 16 pages of evidence to the Residential Tenancy Branch (RTB) and to the landlord. The tenant said she gave the RTB the evidence on April 23, 2015, via a Service BC office. That evidence was not before me and a check of both of the tenants' files numbers revealed no confirmation of an evidence submission made since the first hearing held on April 21, 2015.

The tenant said that she personally delivered the evidence to the landlord. The landlord testified that he had not been given any evidence.

The tenant described the evidence that she says was given to the RTB and landlord. All of the documents described could be entered through oral submissions. Therefore, I determined that the hearing would proceed and that the tenant was at liberty to make any oral submission.

The landlord made an evidence submission; however, I declined to consider that submission as my interim decision prohibited no further evidence, with the exception of one rebuttal from the tenant.

### Issues to be Decided

Is the tenant entitled to compensation for damage or loss under the Act for eviction, rent overpayment, an illegal rent increase and moving costs?

Is the tenant entitled to return of double the security deposit?

Is the landlord entitled to compensation for unpaid August and September 2015 rent?

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$1,035.98?

Is the landlord entitled to compensation in the sum of \$600.00 for additional occupants?

### Background and Evidence

The tenancy commenced on July 1, 2013, rent was \$615.00 due on the first day of each month. A security deposit in the sum of \$300.00 was paid. A partial copy of the tenancy agreement was supplied as evidence; the parties agreed on the terms of the tenancy.

A condition inspection report was completed at the start of the tenancy. Only three pages of the four page standard report were submitted as evidence. The first page was not completed in any detail; it had a line across the page with a notation "all OK" which was initialled by the parties. The tenant said she first received a copy of the inspection report as part of the landlord's evidence for this hearing.

The tenant said the second page of the inspection report should have shown a comment that the carpets were dirty but that notation is removed from the report.

The parties did not agree on the details surrounding the end of the tenancy. The tenant said that the landlord told her he wanted a friend to move into the unit so she would have to leave. The tenant said she then vacated on September 1, 2014. The tenant confirmed that she had received a 10 day Notice to end tenancy on August 15, 2014 and that she did not dispute the Notice.

On August 28, 2014 the landlord applied requesting an Order of possession and monetary Order for unpaid rent. A decision was issued via an ex parte proceeding on September 9, 2014 granting the landlord an Order of possession. The landlord said that within several days he personally served the tenant with the Order and that the tenant vacated on September 15, 2014.

The tenant confirmed that she was not illegally evicted from the rental unit and acknowledged that her claim for fraudulent eviction, August 2014 rent and moving costs was not substantiated. The balance of the claim made by the tenant is:

Double the security deposit	\$615.00
Rent overpayment August 2013	100.00
<b>TOTAL</b>	<b>\$715.00</b>

The landlord has made the following claim:

August 2014 rent	\$100.00
September 2014 rent	615.00
Damage to rental unit	450.00
Carpet replacement	585.98
Cost of additional occupants	600.00
<b>TOTAL</b>	<b>\$2,350.98</b>

The landlord's application indicated a monetary claim totalling \$2,300.00; the details of dispute section of the application set out a claim for \$2,350.00.

The parties agreed that rent was often paid in cash although the tenant said she did not always receive receipts. The tenant alleged that some of the receipts provided in the landlord's evidence were created for use during the hearing and not given to her at the time payments were made.

There was no dispute that on August 1, 2014 the tenant and landlord met in the landlord's living room. The tenant had her witness B.M. with her. The tenant said she paid rent in full and did not receive a receipt. The tenant said she paid the rent in the afternoon.

The tenant's witness B.M. provided affirmed testimony that he was with the tenant on August 1, 2014 when she paid the rent. The witness recalled they met around six or seven p.m. The witness saw the landlord count the money, then fold the money and put it in his pocket. The landlord then said he owed the tenant \$5.00 from an overpayment in the previous month and that he then gave the tenant that sum. The landlord's son was present at the time.

Multiple receipts for cash rent payments were supplied as evidence. A receipt for the cash payment made on August 1, 2014 was not submitted. The landlord said the tenant paid only \$515.00 on August 1, 2014. The tenant and her witness said the tenant paid rent in full.

The landlord submitted a copy of a September 28, 2014 receipt issued for repairs and painting in the unit. The landlord paid \$450.00 cash for repair, painting and closet door

track repair. There was no dispute that the unit had been painted not long before the tenancy commenced.

Photographs taken of the unit show several areas where it appears art work had been hung. A picture of the closet door track, a door off the track hinge, a corner of a wall with ripped drywall and six photos of carpet showing black marks were supplied as evidence.

The landlord submitted a carpet invoice issued on February 27, 2015 in the sum of \$585.98. The invoice does not provide an installation date. The landlord did not supply evidence of the age of the carpet. The landlord said that the carpet was replaced in September 2014 and that he paid for the carpet in February 2015.

The landlord has claimed additional rent in the sum of \$50.00 per month for 12 months. The tenant had extra people live in her unit and was required to pay \$50.00 per month. The tenant confirmed that she paid an extra \$100.00 in August 2013 but then realized it was not a term of her tenancy and did not pay any further additional sums. The tenant denied she had additional occupants living with her. The parties agreed the tenancy agreement did not include a limit on the number of occupants or a term imposing any rent increase for additional occupants.

The tenant said that she did not cause damage to the drywall outside of hanging some art. There were also holes in the wall when she moved into the unit. All of the holes appeared to be from hanging art. The tenant questioned the damage shown and whether the pictures were from her suite. The tenant said the unit needed painting and that the unit had been painted prior to her tenancy.

The tenant said that the carpets were dirty and needed replacement at the start of the tenancy. When she signed the inspection report at the start of the tenancy the tenant thought it was the tenancy agreement. At the start of the tenancy the landlord had said he would have the carpets cleaned but they were not.

The tenant said that on September 1, 2014 she gave the landlord a letter that referenced the 10 day Notice to end tenancy. The letter set out a claim made by the tenant requesting compensation. The letter provided a forwarding address for the tenant. The tenant submits she vacated the unit on that day. As the landlord failed to return the deposit the tenant is requesting double the deposit.

The tenant said she rented a new unit effective September 1, 2014. A number of receipts issued in the sum of \$650.00 commencing September 1, 2014 were supplied as evidence. The receipts are not signed and do not indicate why they were issued, with the exception of the September receipt which references "wireless." The tenant submits these are rent payment receipts.

The tenant gave the landlord an additional \$100.00 rent payment in August 2013. The tenant had not given that payment much thought and then realized she did not have to pay this, so she has claimed return of the excess rent payment. The tenant said her

boyfriend was not living in the unit at the time; that he was just parking his truck on the property.

The landlord said the tenant was being dishonest about service of documents. The tenant did not give the landlord a letter on September 1, 2014 and did not vacate until after the landlord served the tenant with the Order of possession, given to the tenant within several days of September 11, 2014.

The tenant's witness J.T. attended the reconvened hearing. He was muted until his testimony was required. Shortly after the hearing commenced J.T. exited the hearing. The witness did not dial back into the hearing. The tenant expressed no concern that this witness failed to participate in the hearing. J.T. provided the tenant with a written statement in which he declares the tenant vacated on September 1, 2014, leaving the unit in acceptable condition.

### 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.

From the evidence before me I find that the tenant has failed to prove, on the balance of probabilities, that she gave the landlord a letter dated September 1, 2014. The tenant provided no independent corroboration of delivery and it was disputed by the landlord. Provision of the forwarding address in writing is the triggering event that then requires the landlord to comply with section 38(6) of the Act. Therefore, in the absence of evidence that the tenant did give the landlord her forwarding address on September 1, 2014 I find that the claim for return of double the deposit is dismissed.

The tenant voluntarily made an additional rent payment in August 2013 and now wishes to reverse that decision. There is no basis upon which I can reverse a decision made by the tenant in the absence of any duress. If the landlord had demanded payment the tenant was at liberty to bring forward an application requesting an Order in relation to rent owed. Therefore, in the absence of evidence that the payment was not made voluntarily I find this portion of the tenant's claim is dismissed.

During the hearing the tenant agreed that the other matters included on her application, such as compensation for an illegal eviction and moving costs were not substantiated as the tenant vacated the rental unit in the absence of any illegal action on the part of the landlord. The tenant was told those claims would be dismissed.

From the evidence before me, in the absence of a receipt issued for August 2014 rent I find that the tenant made a cash payment to the landlord in the sum of \$615.00 on

August 1, 2014. I found the tenants' witness testimony convincing and consistent and that it corroborated the tenants' submission in a manner that was not rehearsed. Therefore, I find that the claim for unpaid August 2014 rent is dismissed.

I find that the landlord has provided sufficient evidence proving, on the balance of probabilities that the tenant did not vacate the rental unit until she was served with an Order of possession in mid-September 2014. The tenant did not give notice to end the tenancy. The receipts provided by the tenant as evidence she began a new tenancy September 1, 2014 were of no weight as they did not say they were for rent and were not accompanied by evidence that a tenancy agreement had commenced elsewhere.

I have also given J.T.'s written submission little weight. When considered in the face of the landlord's evidence that he had to proceed with eviction by obtaining an Order of possession, I found the landlord's evidence more consistent and reliable. The application made on August 28, 2014 and testimony that the Order of possession was served to the tenant had the ring of truth. Therefore I find that the tenancy ended after the Order of possession was given to the tenant, effective September 15, 2014.

As the tenancy ended effective September 15, 2014 I find that the landlord is entitled to per diem rent to September 15, 2014 in the sum of \$307.50. As the landlord did not supply any evidence of attempts to mitigate a loss of rent revenue beyond September 15, 2014 I find that the claim for the balance of September rent revenue is dismissed. There were no copies of advertisements or any other evidence in support of the landlord's claim he could not locate new tenants.

A condition inspection report was completed at the start of the tenancy however I find it has little weight as each area of the unit was not indicated as inspected. A line was drawn across the report with "OK" written on the form. This does not provide the level of detail that is expected when inspection takes place.

The landlord did not schedule a move-out inspection with the tenant and a report was not completed by the landlord. Photographs taken of the rental unit show the need for cleaning, but the landlord's claim is for damage as the result of holes in the wall and the need for painting.

I have rejected the tenants' submission that the photos supplied by the landlord were not of the unit she rented. The tenant provided no evidence to support this allegation.

I find on the balance of probabilities that the landlord has proven that some drywall damage did occur. I make this finding based on the photograph of the corner that has drywall torn away from the wall. A tenant is entitled to make holes in the walls for art work and I find that the other holes were not excessive in number and do not support a claim for compensation. Therefore, I find the landlord is entitled to compensation in the sum of \$75.00 for wall repair.

The closet doors were off the tracks. Based on the photographs supplied as evidence I find that the landlord is entitled to compensation in the sum of \$50.00 for reinstallation of the doors. The tenant was in a position to ensure the doors were hung properly before she vacated and failed to do so.

When a landlord makes a claim against a tenant for damage to the rental unit policy (#40) suggests an arbitrator may consider the useful life of a building element and the age of the item. Policy suggests a landlord should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. An arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In the absence of evidence setting out the age of the carpets I am unable to determine if the carpets were within the expected useful life of 10 years. The photographs supplied as evidence showed some black marks that I find were not burn marks; they had an appearance that did not reflect burns.

The carpet invoice was issued five months after the tenancy ended which gave me no confidence that the carpet purchased was for the rental unit and not another unit in the home. It is just as likely that the carpet was simply so old the landlord chose to replace the carpets.

Therefore, in the absence of evidence of the useful life of the carpets and evidence that the carpets were damaged by the tenant to the point of requiring replacement I find the claim is dismissed.

As the tenancy agreement did not include a term allowing the imposition of a rent increase for additional occupants I find that the claim for rent in the sum of \$50.00 per month for 12 months is dismissed.

Therefore the landlord is entitled to the following compensation:

	Claimed	Accepted
August 2014 rent	\$100.00	0
September 2014 rent and rent revenue	615.00	\$307.50
Damage to rental unit	450.00	125.00
Carpet replacement	585.98	0
Cost of additional occupants	600.00	0
<b>TOTAL</b>	<b>\$2,350.98</b>	<b>\$432.50</b>

The balance of the landlords' claim is dismissed.

Pursuant to section 72 of the Act I find that the landlord may retain the \$300.00 security deposit in partial satisfaction of the claim.

As the landlord's application has merit I find the landlord is entitled to recover the \$50.00 filing fee from the tenant.

Based on these determinations I grant the landlord a monetary Order for the balance of \$182.50. 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 tenant's application is dismissed.

The landlord is entitled to compensation in the sum of \$425.50 for damage to the rental unit and rent revenue. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

This final decision should be read in conjunction with the April 21, 2015 interim decision.

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: June 12, 2015

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Residential Tenancy Branch



