



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNR; MNDC; FF

### **Introduction**

This is the Landlord's Application for Dispute Resolution seeking a monetary order for unpaid rent or utilities and damage to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

This matter was adjourned from April 30, 2015. An Interim Decision was provided on May 5, 2015, which should be read in conjunction with this Decision. On April 30, 2015, the Landlord provided his oral testimony with respect to his Application. The matter was adjourned in order for the Tenant to provide for exchange of further documents, and to hear the remaining testimony with respect to the Landlord's Application.

Both parties provided affirmed testimony at the Hearings.

It was determined that the Tenant did not serve the Landlord with the documentary evidence that she provided to the Residential Tenancy Branch. Therefore, the Tenant's evidence was not considered and she was invited to provide oral testimony with respect to its context.

### **Issues to be Decided**

- Is the Landlord entitled to unpaid rent for the month of June, 2014, for the cost of cleaning the rental unit and shampooing the carpets, and for the cost of replacing the lock and repairs to the rental unit at the end of the tenancy?

### **Background and Evidence**

The parties had a previous Hearing with respect to this tenancy. The file numbers for those cross-applications are found on the cover sheet of this Decision. A Decision was reached with respect to the previous hearing wherein the Tenant was provided with a monetary award in the amount of \$1,879.00, which included return of the security deposit less \$76.00 for lost keys which the Tenant agreed she owed the Landlord; \$500.00 for overpayment of rent; and recovery of the filing fee. The Landlord's application was dismissed with leave to re-apply, with the exception of his claim against the security deposit because it was extinguished.

This tenancy began on June 1, 2009, and ended on May 31, 2014. Monthly rent was \$2,200.00, due on the first day of each month. The Tenant paid a security deposit in the

amount of \$975.00 at the beginning of the tenancy. There was no Condition Inspection Report that meets the requirements of the regulations at the beginning or the end of the tenancy.

The Landlord gave the following testimony:

The Landlord testified that the Tenant told him she was moving, but did not provide written notice to end the tenancy. The Landlord seeks unpaid rent for the month of June, 2014, in the amount of **\$2,200.00**.

The Landlord testified that the Tenant caused damage to the rental unit and seeks a monetary award for the cost of repairs, calculated as follows:

|                                       |                   |
|---------------------------------------|-------------------|
| Damaged living room wall              | \$157.50          |
| Damaged washroom ceiling              | \$105.00          |
| Damaged closed door and broken mirror | \$367.50          |
| Broken blind in master bedroom        | \$210.00          |
| Damaged garpet                        | \$367.50          |
| Damaged sink faucets                  | \$171.73          |
| Damaged washroom                      | \$315.00          |
| Painting rental unit                  | <u>\$270.39</u>   |
| Total                                 | <b>\$1,964.62</b> |

The Landlord stated that the Tenant did not clean the rental unit at the end of the tenancy. She seeks a monetary award in the amount of **\$368.76** for the cost of cleaning the suite and steam cleaning the carpets.

The Landlord also seeks to recover the cost of replacing the lock at the rental unit in the amount of **\$58.50**. In her written submissions, the Landlord submits:

"Loss of suite entrance two keys, common area two keys, and a mailbox key - \*\*the amount was originally \$94.50 for our first application back in June 2014. After October 27<sup>th</sup> 2014 hearing, the arbitrator deducted \$76.00 from the security deposit in compensation of the lost keys (2 unit entrance keys, 2 common area keys, 1 mailbox key) and the lost visitor parking pass (parking pass cost was \$40). We had to replace the whole lock instead of duplicating the keys, because the former tenant lost ALL the keys and there was no spare to duplicate. The unit was left unlocked for more than 2 weeks. Upon [the Tenant] not responding for two weeks, we decided to replace the lock."

[reproduced as written]

The Landlord provided copies of receipts and photographs in support of his application for damages.

The Landlord testified that the Tenant had originally told the Landlord that he could keep the security deposit to pay for damages, but that she later reneged. The Landlord testified that the Tenant lied to the building manager after the tenancy had ended and persuaded him to let her

into the rental unit, where she took photos of the rental unit after the Landlord had cleaned and repaired the suite.

The Landlord's Witness HY gave the following affirmed testimony:

HW testified that the rental unit was dirty at the end of the tenancy and that there had been an unreported leak in the washroom which caused damage. HW stated that the Tenant "lost the key" to the rental unit.

The Tenant gave the following testimony:

The Tenant acknowledged that she did not give the Landlord written notice to end the tenancy. She stated that she gave verbal notice, which should be sufficient.

The Tenant denied all of the Landlord's damage claims. She submitted that the Landlord did not complete a Condition Inspection Report at the beginning or the end of the tenancy and therefore the Landlord cannot prove his claim for damages. She stated that during the tenancy she requested repairs to the rental unit, but that the Landlord ignored her requests.

The Tenant stated that she told the Landlord that she would allow a deduction for cleaning the rental unit if he gave her a receipt for the cost. The Tenant testified that the Landlord did not provide her with a receipt until she saw it in the Landlord's documentary evidence. The Tenant disputed the cost of shampooing the carpets. She stated that she shampooed the carpets before she moved out. The Tenant testified that she has a receipt for her cost of shampooing the carpets.

The Tenant stated that she had lost the keys, but that she found them later. She stated that the locksmith was at the rental unit on June 13, 2014, but the Landlord didn't show up.

The Landlord gave the following reply:

The Landlord stated that there were stains and dirt in the carpets and that he considered replacing it at first, but that after it was professionally cleaned it looked much better.

The Landlord stated that the damage done by the Tenant was beyond normal wear and tear.

The Landlord testified that the Tenant ignored the Landlord's text messages and that she left the rental unit open for days after the tenancy ended. He stated that the Tenant did not notify the Landlord about the locksmith and that she lied to the building manager to gain access to the rental unit after the tenancy ended.

**Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 21 of the regulation provides that Condition Inspection Reports completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary. The onus is on a landlord to arrange for a Condition Inspection to take place at the beginning and at the end of a tenancy, in accordance with the provisions of Sections 23 and 35 of the Act. In this case, I find that there is insufficient evidence of the state of repair of the rental unit at the beginning of the tenancy because the Landlord did not complete an Inspection Report, or provide photographs of the rental unit taken at the beginning of the tenancy. I find that the Landlord did not provide sufficient evidence to prove the second part of the test for damages. Therefore, the Landlord's claim in the amount of \$1,964.62 for damages is dismissed without leave to reapply.

Section 52 of the Act provides, in part, that in order to be effective, a notice to end tenancy must be in writing. The Tenant did not provide the Landlord with an effective notice to end the tenancy and therefore, I find that that Tenant did not comply with the Act. I find that the Landlord suffered a loss as a result of the Tenant's non-compliance with the Act and that the Landlord is entitled to compensation for loss of rent for the month of June, 2014, in the amount of **\$2,200.00**.

The Tenant acknowledged that she did not clean the rental unit at the end of the tenancy, contrary to the provisions of Section 37(2)(a) of the Act. The Tenant stated that she cleaned the carpet at the end of the tenancy, but her documentary evidence was excluded because she did not serve the Landlord with her documentary evidence. The Landlord provided a copy of a receipt for cleaning and carpet shampooing and therefore, I allow the Landlord's claim in the amount of **\$368.76**.

I find that the Landlord's claim for the cost of rekeying the locks was dealt with in the previous Decision, and was deducted from the security deposit. Therefore, this portion of the Landlord's claim is dismissed without leave to reapply.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

|  |                   |
|--|-------------------|
| June, 2014, rent                       | \$2,200.00        |
| Cost of cleaning and carpet shampooing | \$368.76          |
| Recovery of the filing fee             | \$50.00           |
| <b>TOTAL</b>                           | <b>\$2,618.76</b> |

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$2,618.76** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 07, 2015

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Residential Tenancy Branch

