



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application (filed October 8, 2014): MNDC, MND, MNSD, FF

Tenants' application (filed April 22, 2015): MNSD, MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The matter was convened on May 13, 2015. The Landlord gave her submissions with respect to her Application for Dispute Resolution. The Tenant AH provided her submissions with respect to the Landlord's application and also some testimony with respect to her Application for Dispute Resolution. The time allotted for the Hearing ran out before the Tenant's Application for Dispute Resolution could be fully heard.

The Landlord stated that she was not available between July 15 and 31, 2015. The Tenant stated that she was not available between August 29 and September 14, 2015. The Hearing was adjourned and the Residential Tenancy Branch sent a Notice of the Reconvened Hearing to both of the parties, along with the Interim Decision. The Branch mailed the Notice and Interim Decision to the parties at their addresses for service.

Both parties provided additional documentary evidence after the Hearing on May 13, 2015. I have not considered this late evidence pursuant to Rule 3.19 of the Rules of Procedure.

At the reconvened Hearing on July 9, 2015, the Tenant did not sign into the teleconference. The teleconference remained open for 15 minutes. Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I find that that the Tenants have abandoned their application, and therefore I dismiss the Tenants' application **without leave to re-apply**. The Tenants' Application has been dismissed and therefore I have recorded only the relevant testimony with respect to the Landlord's Application in this Decision.

### **Issues to be Decided**

1. Is the Landlord entitled to a monetary award for damage to the rental unit?
2. May the Landlord apply the security deposit towards her monetary award?

### **Background and Evidence**

This tenancy began on April 1, 2014 and ended on September 30, 2014. The Tenants paid a security deposit in the amount of \$600.00 at the beginning of the tenancy.

#### **The Landlord gave the following testimony:**

The Landlord testified that the rental unit was "gutted and renovated" in 2011. She stated that the previous tenants were "meticulous" and that the rental unit was "spotless" when the Tenants moved in.

The Landlord testified that shortly after the tenancy started, the Tenant AH told her that she had accidentally burned the kitchen counter top. The Landlord stated that she asked her nephew, who works in construction, about repairing the countertop. The Landlord testified that her nephew said that the whole countertop would have to be replaced because it was not possible to replace just a section of the countertop. The Landlord seeks a monetary award in the amount of **\$757.00** for replacing the countertop. The Landlord provided photographs of the damage to the countertop.

The Landlord stated that the Tenants initially gave their notice to move out effective October 1, 2014. She testified that she told the Tenants that the end of the tenancy had to be on September 30, 2014, by 1:00 p.m., but that she would extend the time to 5:00 p.m. The Landlord stated that she gave the Tenants a "list of things to get ready" for move-out.

The Landlord testified that the Tenants “did no cleaning at all”. The Landlord stated that she called a professional cleaning company and was told that it was not possible to clean the rental unit on such short notice and that the oven would have to be sprayed first. The Landlord stated that she “cleaned all night” getting the rental unit ready for the next tenant. The Landlord stated that she spent 10 hours cleaning. The Landlord provided an estimate from the cleaning company for 4 hours (two people) @\$92.00 per hour. The Landlord seeks compensation in the amount equivalent to the estimate from the professional cleaner, **\$368.00**.

The Landlord testified that the Tenants also left garbage in the back lane of the rental property. The Landlord stated that she got a quote for the cost of taking the garbage to the dump, and was told it would be a minimum amount of \$125.00. She stated that she got her own truck and removed the garbage herself. The Landlord seeks compensation in the amount of **\$125.00**. The Landlord provided photographs of the garbage in evidence.

The Landlord stated that the Tenants also scratched the laminate floor beyond reasonable wear and tear. She stated that she was abandoning this portion of her claim because she did not provide proof of the cost for the repairs.

The Tenant AH gave the following testimony:

The Tenant acknowledged that she accidentally burned the kitchen countertop, but stated that the Landlord said she didn’t want compensation for the burn. The Tenant stated that she told the Landlord that the counter was damaged when she moved in, and that she showed the Landlord the previous damage. The Tenant stated that she was prepared to pay \$100.00 for the damage to the counter and that the Landlord agreed to that amount.

The Tenant stated that the Tenants didn’t have time to clean the rental unit if they had to vacate by 1:00 p.m. The Tenant stated that they were prepared to relinquish some of the security deposit for cleaning. She testified that two nights before they had to move, the Landlord said she would allow an extension of time to 5:00 p.m. The Tenant testified that she got an estimate from the same professional cleaning company that the Landlord contacted, but that her estimate was for \$150.00. The Tenant provided a copy of an e-mail from the professional cleaning company in evidence. The Tenant acknowledged that “we did not cleaning before we moved out.

The Tenant stated that they left a carpet and some other things at the rental unit, but not as much as the Landlord's pictures show. She stated that they would have paid for the junk removal if the Landlord had provided a receipt.

The Landlord provided the following response to the Tenant's testimony:

The Landlord stated that the Tenant's estimate for cleaning was for "an easy clean" of only 1.5 hours. She testified that the suite was very dirty and needed a lot of cleaning.

The Landlord denied that she did not expect compensation for the burn on the kitchen counter. She stated that the quote that she provided did not include the cost of a plumber and repairs to the backsplash. She stated that she did not agree to compensation of only \$100.00 for the damage to the counter.

### **Analysis**

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenants pay for the loss requires the Landlord to prove 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 Tenants in violation of the Act or agreement,
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.

Condition Inspection Reports must be completed at the beginning and the end of a tenancy. The onus is on the Landlord to arrange for the Condition Inspections to take place. Section 21 of the regulation provides that a Condition Inspection Report, completed in accordance with Part 3 of 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.**

Section 37(2)(a) of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In this case, there is no dispute that the Tenants burnt the countertop, did not clean the rental unit at the end of the tenancy, and left garbage behind.

Based on the estimate provided by the Landlord, I accept that cleaning the rental unit at the end of the tenancy took the Landlord 10 hours. This cleaning included:

- All glass windows, mirrors and shower doors;
- Window ledges and baseboards;
- Fridge (inside and out);
- Stove (top, oven, drawer and side walls;
- Dishwasher; exhaust hood and screen, light bulb and cover;
- Kitchen backsplash;
- Kitchen cupboards and shelves
- Toilet;
- Bathtub;
- Sink and counters in bathroom;
- Light fixture covers;
- Walls (including filling all holes);
- All floors washed.

The Landlord testified that she did not use the services of the professional cleaning company because there was insufficient time to do so before her next tenant moved in. I allow this portion of her claim in the amount of **\$250.00** (10 hours of the Landlord's labour at \$25.00 per hour).

I find that the amount claimed for disposal of the carpet, discarded wood, garbage and a suitcase is reasonable and allow the Landlord's claim for this portion of her application in the total amount of **\$125.00**.

I find that the Landlord is not entitled to compensation for the cost of replacing the countertop with a new countertop. There is no dispute that the countertop was damaged at the beginning of the tenancy. However, there is also no dispute that the Tenant caused further damage to the countertop, which damage I find is beyond normal wear and tear. Therefore, pursuant to the provisions of Section 67 of the Act, I award the Landlord half of the amount estimated to replace the countertop, in the amount of **\$378.50**.

I find that the Landlord has established a total monetary award in the amount of **\$753.50** (\$250.00 + \$125.00 + \$378.50)

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the \$600.00 security deposit towards partial satisfaction of her monetary award, leaving a balance of **\$153.50**.

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

### **Conclusion**

I hereby provide the Landlord with a Monetary Order in the amount of **\$203.50** for service upon the Tenants. This Order may be filed in the Provincial Court 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: July 23, 2015

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Residential Tenancy Branch

