



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, MNR, FF

### Introduction

This matter dealt with an application by the landlords for a Monetary Order for compensation for loss of revenue, replacement cost of missing items, cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the tenant's security deposit in partial payment of those amounts. Both parties attended the hearing.

### Issues(s) to be Decided

Are the landlords entitled to compensation for loss of revenue cleaning and repairs and if so, how much?

### Background and Evidence

Service of the Application was admitted.

Based upon the evidence of the landlords I find that this month-to-month tenancy started on September 1, 2013 and ended on July 31, 2010 when the tenant moved out on March 31, 2015. Rent was \$ 895.00 per month payable in advance on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$ 401.60.

Loss of Revenue:                      \$ 895.00

The landlords testified that they received an email on February 28, 2015 which they read at 7:00 PM advising them that the tenant intended to vacate at the end of March 2015. The next day on March 1, 2015 the tenant hand delivered a note advising them the same thing. The landlords testified that the emailed notice was invalid as it was

contrary to the Act and the second notice was late. Based on their belief that the notice was invalid the landlords did not begin their search for new tenants until the middle of March. As a result they were unable to find new tenants until May 2015. The landlords are claiming for the loss of rent for April 2015.

The landlords claimed that certain of their personal items were in the house at the commencement of the tenancy and were either missing or broken at the end. They produced videos and photos, estimated value for and listed them as follows:

kitchen Spice Rack:	\$ 19.95
Three wall Cabinets	\$ 579.00
Coat Rack	\$ 24.98
Two lamp shades	\$ 31.44
An outdoor table	\$ 99.00
Three bedroom window screens	\$ 50.40
Front door glass	\$ 22.40
Dining room light fixture	\$ 99.00
<u>Cleaning</u>	\$ 200.00

The landlords claimed that they spent 20 hours cleaning the unit. They testified that most of the time spent dealt with removing mould around the window frames and removing stains from the hardwood floors.

The tenant testified that she sent her notice to tend the tenancy by email at around 6:30 PM on February 28, 2015 and then delivered a second notice in person because she thought she was required to do so.

The tenant testified that she rented an unfurnished unit and had requested that the landlords remove many if not all of the items that they now alleged are missing. She painted the suite at the beginning of the tenancy and put most of the items in storage in the shed. The tenant testified that the landlords retrieved the missing items although some may have been stolen and some she just cannot account for. She specifically recalled the landlord KW retrieving the cabinets in her car. She testified that she returned the lamp shades. The tenant testified that there was not any list of items at the beginning of the tenancy. The tenant admitted responsibility for the screens and the broken glass door but none of the other missing items. She admitted breaking the dining room fixture but purchased a new one and left it behind. She also does not know what happened to the outdoor table but left her own behind at the request of the landlords.

The tenant testified that she removed all of the wall to wall carpet at the beginning of the tenancy and as a result there was some stains revealed on the floors which were more than forty years old. She testified that the mould around the windows was caused by condensation as the heat vents for the forced air system were directly under the

windows. She cleaned and painted them at least once during the tenancy and cleaned them as best she could at the end. The tenant testified that the landlords began cleaning the unit before performing the final inspection thus depriving her of any opportunity to remedy any deficiencies. The tenant testified that she is a nurse and keeps a very clean house. She left the house reasonably clean.

The landlords in reply specifically denied receiving the lamp shades or the cabinets which they testified were too large to put in their vehicle. The landlords did not contradict the tenant regarding the outdoor table or replacing the dining room fixture.

### Analysis

Section 52 of the Act states as follows:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form

The landlords submitted that as the notice was an email it was contrary to section 52 of the Act and therefore invalid. I do not agree. The contents of the email were adequate notice to the landlords, who only had one rental unit, that the tenant intended to vacate that unit on March 31, 2015. Given the prevalence of email technology, I find it would be contrary to the intention of the Act to find that an email notice from the tenant providing all the essential information that one would expect in a notice, could be invalidated by section 52. Furthermore in this case the landlords waited until the middle of March before searching in earnest for new tenants. This was not prudent or wise whether they believed the notice was in valid or not. In so doing they failed to take reasonable steps to mitigate their loss contrary to section 7(2) of the Act:

**Liability for not complying with this Act or a tenancy agreement**

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

Accordingly I have dismissed the landlords claim for compensation for loss of revenue for the month of April 2015.

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

I accept the tenant's testimony that she cleaned the unit and left it reasonably clean. I also find that the mould around the windows and staining of the hard wood floors were wear and tear and therefore the tenant should not have to compensate the landlords for this type of cleaning. As the landlords admitted that most of the cost of cleaning related to these items, I have dismissed all the landlords' claim for the cleaning.

Regarding the rest of the items, I find that the landlords left the items in the possession of the tenant. The tenant was therefore required to take reasonable care of them. I find that by removing them from the unit and placing them in storage without keeping track of them and currently knowing of their exact location, the tenant failed to discharge her duty of care. I accept and prefer the landlord KW's testimony that she specifically did not receive the lamp shades as she would have noticed them. I also accept and prefer the landlord KW's evidence that she did not collect the cabinets as they did not fit into her car. These two explanations seem logical and make sense. Accordingly I reject the tenant's assertion that the landlord retrieved these or any of the other items claimed in this application. I find that the tenant is responsible for the replacement cost of all of them except for the outdoor table and dining room light fixture.

I accept the tenant's uncontradicted testimony that the tenant left her table behind in replacement of the outdoor table and also purchased and left a new dining room fixture. I have therefore dismissed the landlords' claim for those items.

I therefore find that the landlords have proven a claim totalling \$ 727.87. As the landlords have been partially successful in this matter, I find pursuant to s. 72 of the Act that they are also entitled to recover one half of the \$50.00 filing fee for this proceeding amounting to \$ 25.00. I order the landlords pursuant to s. 38(4) of the Act to retain the tenant's security deposit inclusive of interest amounting to \$ 401.60 in partial payment of the rent arrears. The landlords will receive a Monetary Order for the balance owing.

### Calculation of Monetary Award

Spice Rack	\$ 19.95
Wall cabinets	\$ 579.00
Coat rack	\$ 24.98
Lamp shades	\$ 31.14
Bedroom Screens	\$ 50.40
Front door glass	\$ 22.40
Filing Fees for this application (1/2)	\$ 25.00
Less Security Deposit and interest	-\$ 401.60
<b>Total Monetary Award</b>	<b>\$ 351.27</b>

### Conclusion

In summary I ordered that the respondent pay to the applicants the sum of \$ 727.87 in respect of this claim plus the sum of \$ 25.00 representing one half of the filing fee for a total of \$ 752.87. I order that the landlords retain the security deposit amounting to \$ 401.60 inclusive of interest. I grant the landlords a Monetary Order for the balance in the amount of **\$ 351.27** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims by the landlords.

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: August 31, 2015

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Residential Tenancy Branch

