



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0149 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants' evidence was sent by registered mail to the landlord and is deemed to have been served five days after it was sent. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The tenants advised me there was an error in the spelling of their last name. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agreed that this tenancy started on December 14, 2013 for a fixed term tenancy which ended on January 31, 2014. The tenancy then reverted to a month to month tenancy and ended on January 12, 2015 when the tenants vacated the rental unit. Rent for this furnished unit was \$530.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$265.00 and a key deposit of \$100.00 on December 14, 2013.

KD testified that the tenants gave notice to end their tenancy on December 28, 2014. This was a 30 day notice and the tenants should have paid rent for January and vacated at the end of the month. The tenants failed to pay rent for January, 2015 of \$530.00. The landlord served the tenants with a 10 Day Notice to End Tenancy on January 02, 2015. The landlord seeks to recover the unpaid rent plus a \$25.00 late fee as provided for under the tenancy agreement.

CM testified that JL gave notice to end the tenancy on December 28, 2014 and promised to pay rent for January although they were going to move out early. They did the move out condition inspection on January 12, 2015 and JL returned the keys and said she would pay the rent the next day; however, no rent was received.

KD testified that the tenant smoked heavily in the rental unit and the landlords had to wash the unit and spray the furniture. The landlord testified that they used a product to

eliminate odours and used two different products to attempt to get rid of the smell of smoke. KD testified that the tenancy agreement does not stipulate that tenants may not smoke in the rental unit but the landlord thought the tenants would have smoked outside. KD testified that he is unsure if previous tenants had smoked in the unit but regardless the unit was provided to the tenants clean and odour free. KD testified that two years prior to the tenants moving in another tenant had smoked in the unit and burnt the carpets in all the rooms as indicated on the tenants move in condition inspection report. The unit was deodorized and cleaned at that time.

KD testified that the odour could not be removed from the furniture; in addition to this the love seat and box spring were left damaged. Due to the odour and damage, the furniture was removed and taken to the dump. KD testified that the furniture was in good shape at the start of the tenancy. The furniture was purchased by the landlord second hand in approximately 2012 although KD does not know how old the furniture was when he purchased it. KD referred to their photographic evidence showing the damage to the love seat and box spring and the staining on the furniture and walls.

KD testified that the landlord seeks to recover the following amounts due to odour in the unit and damage to the furniture:

Odour spray X2	\$72.70
Removal of furniture two men two trips	\$50.00
Replacement box spring and mattress	\$100.00
Replacement chairs	\$45.00
Replacement second chair	\$55.00
Replacement love seat	\$95.00
Delivery of furniture	\$50.00

KD testified that the tenants did not repair a blind cord which they damaged during their tenancy. KD repaired this cord and seeks to recover the amount of \$12.00. The landlord

has provided a receipt for this cord but it is illegible. KD testified that the original receipt still in his possession is also illegible.

KD testified that he spent eight hours doing repairs in the unit. This included removing screws in the walls and filling and repainting the holes, deodorizing the unit and furniture, repairing a curtain rod and cord, touching up paintwork, rechecked and spraying ceilings and walls to remove odours. KD has claimed \$15.00 per hour for eight hours work to the amount of \$120.00. KD has provided an itemised list of repairs.

KD testified that the other property manager CM had to do some cleaning in the unit to eliminate the odour, CM washed walls, and windows twice, washed inside and outside cupboards, washed air conditioner and closet doors and sprayed carpets with deodorizer. This work took 1.75 hours and the landlord seeks to recover \$17.50.

KD requested an Order to keep the security and key deposit to offset against this monetary claim and to recover the \$50.00 filing fee from the tenants.

JL testified that they agree they owe half a month's rent for January as they had given notice to end their tenancy and vacated on January 12, 2015. The landlord also held their security and key deposit which could be used for the balance of rent. JL agreed that no rent was given to the landlord for January, 2015 and agreed they also owe a late fee of \$25.00.

JL testified that this unit was rented as a smoking unit. They were never told not to smoke in the unit or to smoke outside. The tenants disputed that they caused any damage to the unit or furniture as the previous tenant also smoked heavily in the unit during his three year tenancy and the odour remained in the unit. This is shown on the move in condition inspection report as it documented the burn marks on the carpets in all rooms of the unit. The tenants disputed that the landlord can now hold them responsible for any damage or odour in the unit or on the furniture.

JL testified that they did not cause damage to the love seat or the box spring. JL testified that the landlord's inventory of furniture does not show the condition the furniture was in at the start of the tenancy. JL testified that the furniture was heavily used and was stained at the start of their tenancy. The box spring came from CM's daughter during their tenancy and was not damaged by the tenants.

The tenants disputed the landlord's claim for cleaning and repairs. JL testified that they are entitled to hang pictures in their rental unit. They received no instruction from the landlord as to what type of nail or screw to use to hang pictures and they were not told not to hang pictures. JL testified that they cleaned the unit, washed the walls and steam cleaned the carpets. The cord for the blind was already broken at the start of their tenancy and was held together with tape. JL testified she spoke to KD about this when he was at the unit and KD informed JL that it was a hideous job to repair. KD never repaired the cord during their tenancy and the tenants have doubts that KD repaired it after they moved out as the incoming tenant informed them the cord was still held together with tape.

JL testified if CM had done the level of cleaning indicated on her cleaning list it would have taken her longer than 1.75 hours. JL referred to the move out inspection report which does not indicate that the unit has a strong odour of smoke or is unclean. JL also referred to the landlord's receipt for the odour spray as that receipt is dated in December, 2014 and the tenants did not vacate until January 12, 2015.

KD cross examined the tenants:

<b>KD's questions</b>	<b>JL's response</b>
Did you wash the walls sufficiently	Yes, otherwise you would see a different paint tone
Were you instructed to smoke outside	We were never told to smoke outside
Were you told to smoke on the	No if you had advised us to do so we would have

balcony	gone outside to smoke
Did you put screws in the walls for pictures	My husband used two drywall screws to hang pictures
Was the love seat broken when you got it	We don't know as no one looked at it underneath
Did you clean the furniture at the end of the tenancy	The furniture was vacuumed
Did you use an upholstery cleaner	No as the furniture was already stained when we moved in

JL cross examined the landlord's agents:

<b>JL's questions</b>	<b>KD's response</b>
The receipt for the drape cord is not dated if you repaired the cord when the new tenant moved in, it should be dated after January 12, 2015	I don't know what date is on the receipt
Why is the date on the odour spray dated for December, 2014 prior to the tenants even giving notice to end tenancy	It is a pet product used to eliminate odour and it is purchased when it is on sale and then kept until it is needed.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent for January, 2015; the tenants do not dispute that they failed to pay rent for January, 2015. A tenant must give one clear month's notice to end a tenancy. As written notice was given on December 28, 2014 this would not be effective until January 31, 2015 pursuant to s. 45(1) of the *Act*. Consequently, the tenants are responsible for rent for the entire month of January,

2015 and I therefore find the landlord has established a claim to recover unpaid rent for January, 2015 of \$530.00.

I further find the tenancy agreement contains a clause to inform the tenants that a late fee of \$25.00 will be charged in any month that rent is late. The tenants do not dispute the landlord's claim to recover a \$25.00 late fee; I therefore find the landlord has established a claim for \$25.00.

With regard to the landlord's claim for monetary compensation to remedy the odour left in the unit from smoking and for damage to some furniture; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlord's claim that the tenants should not have been smoking in the unit as this left the unit and furniture with a strong odour of

smoke. The tenancy agreement does not stipulate that this is a non-smoking unit; the tenants deny that they were ever told not to smoke in the unit and have testified that previous tenants smoked in the unit and when they rented the unit it already had an odour of smoke. As the landlord has the burden of proof in this matter the landlord would need to provide corroborating evidence to show that the unit and furniture did not have a strong odour at the start of the tenancy and that there was a strong odour left at the end of the tenancy. Neither of the inspection reports indicates that there was a strong odour in the unit or the furniture. The furniture inventory does not stipulate the condition of the furniture at the start of the tenancy.

When both parties evidence is equally probable then it is one person's word against that of the other and the burden of proof is not met with regard to odour in the unit and damage to the furniture. The landlord must expect there to be some residual odour when a unit is rented without the stipulation of it being a non-smoking unit. Furthermore the landlord has allowed previous tenants to smoke in the unit. There is insufficient evidence that the unit and furniture were odour free at the start of the tenancy.

Consequently, the landlord's claim for the following items is dismissed.

Odour spray X2	\$72.70
Removal of furniture two men two trips	\$50.00
Replacement box spring and mattress	\$100.00
Replacement chairs	\$45.00
Replacement second chair	\$55.00
Replacement love seat	\$95.00
Delivery of furniture	\$50.00

With regard to the landlord's claim for the repair for the cord on the blinds; JL testified that this cord was already broken and held together with tape. The landlord evidence concerning the cost for the cord is illegible. In order to be considered, evidence provided by a party must be legible. I find therefore the landlord has not met the burden of proof



in this matter that a new cord was purchased or the actual cost for the cord and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for labour costs for cleaning and repairing the unit; I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance on landlords and tenants responsibilities:

**Nail Holes:**

Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

As no instructions were given to the tenants with regard to the hanging of pictures then the landlord may not hold the tenants responsible for the cost of filling the holes. As I have found the tenants cannot be held responsible for odour in the unit I am not prepared to allow the landlord's claim in labour costs for cleaning the unit or spraying a product to remove odours. The landlord's claim for cleaning and repairs is therefore dismissed.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the security deposit of \$265.00 and key deposit of \$100.00 in partial satisfaction of the landlord's claim for unpaid rent pursuant to s. 38(4)(b) of the *Act*.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for January, 2015	\$530.00
Late fee	\$25.00

Filing fee	\$50.00
Less security and key deposit	(-\$365.00)
Total amount due to the landlord	\$240.00

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$240.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 11, 2015

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Residential Tenancy Branch

