



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF; MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This also hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party raised any issue with service of documents. The landlord elected to call his current tenant's daughter as a witness.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to compensation pursuant to subsection 51(2) of the Act for the landlord's failure to carry out the stated purpose in the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) for at least six months? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in 2011 between the tenant and the previous owner of the rental unit. On or about 11 June 2014, ownership of the rental unit transferred to the landlord. There is no written tenancy agreement in respect of this tenancy. At some point after the landlord became the owner of the rental unit, the rent was changed from \$650.00 to \$700.00 per month—I was not provided with any notice of rent increase or tenant's agreement in writing for this rent increase. The landlord continues to hold the tenant's security deposit in the amount of \$325.00 which was collected at the beginning of the tenancy.

On or about 1 August 2014, the landlord issued the 2 Month Notice to the tenant. The 2 Month Notice was issued on a form originating from Ontario, not British Columbia. The 2 Month Notice set out an effective date of 1 October 2014. The parties agreed to a later move out date of 15 October 2014.

The tenant testified that there was no condition move-in or move-out inspection report created in respect of this tenancy. The landlord testified that the tenant did not return possession of the rental unit to the landlord until late on 15 October 2014. The landlord testified that there was not time to do anything except a five or ten minute walkthrough. The landlord admitted that he told the tenant that he could not attend at the rental unit before 1930 because he was returning from work.

The tenant agreed in writing to a deduction in the amount of \$105.00 from his security deposit. The deduction was in respect of wall damage and cleaning. The landlord issued a cheque to the tenant for the balance of the deposit in the amount of \$220.00. The landlord later stopped payment on this cheque.

The landlord testified that in October he was showing his one bedroom suite. The landlord testified that he may have also let prospective tenants look at the rental unit but it was not for the purpose of renting out that unit. The tenant testified that his friend went to view the landlord's one bedroom rental unit, but was shown the two bedroom unit. I was provided with a written statement from the tenant's friend. In that statement she notes that the landlord told her that the rental unit would be available as at 1 November 2014.

The landlord testified that his parents occupied the rental unit for seven months. The landlord testified that his parents occupied the rental unit in order to assist with taking care of grandchildren. The parents vacated the rental unit in order to move in with the landlord's sister. The landlord testified that the parents spend time living with their various children in order to give their other children privacy. The landlord testified that his parents vacated the rental unit on 30 June 2015. The landlord testified that he began advertising the rental unit for rent in mid-April as available for 1 July 2015.

The landlord provided me with a written statement from his parents. The statement indicates that the parents lived with the landlord from 1 November 2014 to "31" June 2015. I clarified with the landlord at the hearing that the June date should read "30" June 2015.

The witness testified that she is the daughter of the current tenant in the rental unit. The witness testified that on or about 15 June 2015 she saw the rental unit available for rent. The witness testified that she viewed the rental unit that day and committed to taking the rental unit then. The tenancy agreement was entered into for 1 July 2015. The witness testified that she observed an older couple living in the rental unit.

The landlord testified that he tried to clean the stove for an hour. The landlord testified that, as he could not clean the stove, it had to be replaced. The landlord testified that he replaced the stove with a used stove that was approximately three or four years old. The landlord testified that he did not have any idea how old the old stove was when it was replaced. The landlord testified that the stove had wheels.

The landlord testified that the walls were stained and had children's writing on them. As well the landlord testified that there was drywall damage. The landlord testified that he had to repaint the entire suite. The landlord testified that the rental unit was last repainted approximately thirteen years ago.

The tenant testified that the rental unit was not in good condition when the tenancy began and that he left it in similar condition at the end of the tenancy. The tenant asks me to draw an adverse inference from the low rent as to the condition of the rental unit.

The landlord provided me with photographs that indicate that the rental unit was unclean at the end of the tenancy. In particular the walls were marked, the carpet had stains and the oven was dirty.

The landlord submits that he is an inexperienced landlord.

The tenant testified that he provided his forwarding address in writing to the landlord on 16 January 2015.

The tenant claims for \$1,840.00:

<b>Item</b>	<b>Amount</b>
Return of Remainder of Security Deposit	\$220.00
Subsection 38(6) Compensation	220.00
Subsection 51(2) Compensation	1,400.00
<b>Total Monetary Order Sought</b>	<b>\$1,840.00</b>

The landlord claims for \$200.00 in excess of the tenant's security deposit. I was not provided with a monetary order worksheet in respect of this claim. The landlord provided receipts in the following amounts:

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$150.00
Replace Stove	225.00
Repaint Rental Unit	102.17
Photographs	17.66
<b>Total Monetary Order Sought</b>	<b>\$494.83</b>

## Analysis

### *Tenant's Claim*

As mentioned to the tenant at the hearing, there is no application with respect to any rent increase before me. As such, I have not considered whether or not the rent increase from \$650.00 to \$700.00 was valid. This does not prevent the tenant from making an application in the future should he choose to do so.

Subsection 51(2) provides for compensation if the landlord did not use the rental unit for the stated purpose:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I accept the landlord's testimony (as supported by the written statement from his parents and the testimony of the current tenant's daughter) that his parents occupied the rental unit from 1 November 2014 to 30 June 2015. As such, the tenant is not entitled to compensation pursuant to subsection 51(2) of the Act.

Section 38 of the Act sets out relevant rules dealing with security deposits:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
  - (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,  
...
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

I accept the tenant's testimony that his previous landlord did not complete a condition move-in or move-out inspection with the tenant. It does not matter that this was the fault of the previous landlord. Accordingly, the landlord's right to claim against the security deposit for damage (which is all the landlord has claimed) was extinguished by this failure pursuant to subsection 24(2). Thus, the landlord could not retain amounts pursuant to paragraph 38(4)(a) even if the tenant agreed to it in writing because of the operation of subsection 38(5) of the Act.

As the landlord's right to claim against the security deposit was extinguished, the landlord's only option was to return the security deposit within fifteen days of receiving the tenant's forwarding address. The tenant provided his forwarding address to the landlord on 16 January 2015 and the landlord did not return the deposit. As such, the tenant is entitled to an order for compensation pursuant to subsection 38(6) of the Act.

*Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" sets out that:

- 4. In determining the amount of the deposit that will be doubled, the following are excluded:
  - any arbitrator's monetary order outstanding at the end of the tenancy;
  - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
  - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

As the landlord's right to deduct from the security deposit was extinguished the full amount of the security deposit is awarded as compensation pursuant to subsection 38(6) of the Act, that is, \$325.00. The tenant is also entitled to return of his security deposit.

The tenant is entitled to return of his security deposit and compensation pursuant to subsection 38(6) of the Act for a total monetary award of \$650.00.

### *Landlord's Claim*

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The tenant admitted that he did not shampoo the carpets but says that they were not cleaned on move in. From the photographic evidence provided, it appears that there is staining on the carpet. The tenant did not deny that the carpet stains were the result of his tenancy. On the basis of this evidence I find that the tenant was obligated to spot clean the stains and did not, but was not obligated to steam clean the carpets as they were not provided to him in a shampooed state. On this basis, I award the landlord the cost of one half of the carpet cleaning on the basis that the tenant did fail to spot clean the carpet for the staining that occurred in the course of the tenancy.

The landlord claims for the cost of repairing and repainting the walls. On the basis of the landlord's photographic evidence, the damage that required patching appears to be wear and tear. Pursuant to subsection 32(4), wear and tear is not compensable, thus, the landlord is not entitled to any award for the repair of the walls.

The landlord seeks the cost of repainting the walls. *Residential Tenancy Policy Guideline* “40. Useful Life of Building Elements” provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The landlord testified that the interior paint was thirteen years old. As such, the capital value of the interior paint has fully depreciated and has no value. On this basis, I find that the landlord is not entitled to recover the cost of repainting the rental unit.

The landlord seeks to recover his cost of replacing the stove and hood fan. The landlord testified that the stove could not be cleaned and had to be replaced.

Subsection 7(2) of the Act deals with a party’s obligation to mitigate their damages:

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.

In this case, the landlord only has his uncorroborated testimony that the stove required replacement because of the accumulated grime. Without more evidence with respect to the steps undertaken to clean the stove, I am unable to find that the landlord mitigated his damages by replacing the entire stove rather than cleaning it.

Policy Guideline 1 sets out the tenant’s responsibility for cleaning major appliances:

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

The photographs of the oven and stove indicate that the tenant did not clean the stove, elements, and oven as required by subsection 32(3) and Policy Guideline 1. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the landlord nominal damages of \$100.00 for the tenant’s failure to clean the oven.

The landlord has claimed for his costs associated with providing photographic evidence the costs associated with serving documents in these proceedings. These costs are best characterized as “disbursements” incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to



section 67 of the Act as the tenant's contravention of the Act is not the proximate cause of the expense.

I find that the landlord is not entitled to compensation for the photograph costs as disbursements are not a cost that is compensable under the Act.

The landlord is entitled to a total monetary award of \$175.00:

Item	Amount
Carpet Cleaning (0.5)	\$75.00
Cleaning Damages	100.00
<b>Total Monetary Award</b>	<b>\$175.00</b>

#### Order As to Filing Fee

As both parties experienced partial success in their applications, I am exercising my discretion to order that the parties will each bear the cost of their own filing fee.

#### Conclusion

I issue a net monetary order in the tenant's favour in the amount of \$475.00 under the following terms:

Item	Amount
Return of Security Deposit	\$325.00
38(6) Compensation	325.00
Offset Landlord's Damage Award	-175.00
<b>Total Monetary Order</b>	<b>\$475.00</b>

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: August 19, 2015

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Residential Tenancy Branch

