



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

### Preliminary Matters

The tenant present at the hearing and the tenants' agent confirmed receipt of the landlords' hearing documents and evidence in April 2015.

The agent confirmed that she gave her son, one of two co-tenants, the hearing documents. The agent is attending the hearing to represent her son. This party will be referred to as agent. The second co-tenant is the daughter of the agent.

The landlord confirmed receipt of the tenants' evidence with the exception of two photographs. Those photographs were copies taken from the landlords' evidence; therefore, they were before me as part of the landlords' written submission.

The landlord named the male tenants' mother as a respondent. The landlord said that when the tenancy ended the mother signed a document indicating she would pay the cost of repairs. I explained that since the mother is not named on the tenancy agreement she is not a co-tenant and, therefore, is not a party to the dispute. I based this decision on section six of the Act, which provides:

***Enforcing rights and obligations of landlords and tenants***

**6** *(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement*

Therefore, as the tenants' mother is not named on the tenancy agreement the application for dispute resolution was amended to remove the tenants' mother as a respondent.

The landlord claimed the cost of photographs. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the request for the cost of photographs is declined and the total sum claimed has been adjusted by \$113.58.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on May 1, 2014 as a one year fixed-term. Rent was \$725.00 per month due on the first day of the month. A security deposit in the sum of \$362.50 was paid on April 26, 2014. A copy of the tenancy agreement was supplied as evidence.

The multi-unit building was constructed in 1947. The agent said the unit was small, the landlord said it was 450 square feet. The landlord supplied a drawing of the unit which shows the dimensions as 235.5 X 191.5. Taken as measured in inches this would result in a space of 304 square feet.

A move-in condition inspection report was not completed at the start of the tenancy.

Only the male co-tenant lived in the rental unit; his sister never intended to reside in the home.

There was no dispute that the tenancy ended on February 22, 2015. The landlord confirmed he was given several days' notice of the vacancy date. A move-out condition inspection report was not scheduled with the tenant or completed by the landlord. A written forwarding address was not given to the landlord at the end of the tenancy.

The landlord has made the following claim:

Wages 193 X \$25.00/hour	\$4,825.00
Hauling	926.00
Carpet and lino replacement/installation	1,493.78
Paint	403.56
Home Depot – supplies	403.70
Home hardware – supplies	47.47
Door electronic device	310.00
Window replacement	310.00
False fire alarm costs	150.00
Fuel costs	60.00
<b>TOTAL</b>	<b>\$8,929.51</b>

The sum claimed on the application was reduced by the value of the security deposit. The total above reflects all items claimed without deducting the value of the deposit.

The landlord supplied a significant number of coloured photographs taken of the rental unit at the end of the tenancy. The photographs were not numbered and were not fully examined or referenced by the landlord during the hearing. The landlord stated that items referred to during the hearing should be able to be identified in the photographs.

There was no dispute that the tenant left the rental unit without doing any cleaning or removing personal belongings. The photos showed a unit that was in a state of disarray after the tenant vacated, including:

- Personal items left throughout the unit;
- Spray paint on the lino floor;
- Furniture, food, garbage, large amounts of clothing and a mattress;
- Walls covered in blue paint;
- A shattered door frame;
- Carpet cut out of the flooring;
- A dirty stove and oven;
- Blinds that had been removed from windows;
- Paint marks on the ceiling;
- Screws in wood trim;
- Stickers covering the fridge;
- Sub-flooring that is damaged and rotted;
- Yellow marks on the walls; and
- Multiple hypodermic needles found in the unit.

Photos of the front door repair; painting, floor replacement and cleaning that were completed was supplied as evidence. The landlord's written submission stated the entrance closet door was pulled from the frame, along with the hinges; there were large screw and nails holes in the walls, screws in the floor, a three foot by three foot hole cut out of the living room carpet, broken light fixtures, the kitchen tap handle was missing,

walls were smoke stained, nail polish was on the kitchen lino, cupboard doors ripped out, bedroom ceiling was blood splattered, bathroom medicine cabinet was pulled from the wall and the door was damaged and the bathroom floor was moldy, ripped and beyond repair.

The landlord supplied a copy of a February 24, 2015 document signed by the agent. This document indicated that the agent would reimburse the landlord for the cost of repairing damages caused by her son. The agreement also set out an understanding in relation to disposal of the tenants' personal property left in the rental unit. The landlord pointed to this document as proof the agent should pay the costs, as claimed. The parties had been unable to reach a settled agreement.

The landlord said that four months prior to the start of the tenancy the walls, ceiling and inside and out of the cupboards were painted. The carpet was cleaned. New door handles had been installed. The landlord thinks the carpets may be six to eight years old, but he was not sure. The linoleum was "fairly old."

The receipts supplied as evidence by the landlord were examined and the landlord was questioned in relation to the individual items purchased. A 4 X 8 sheet of plywood was purchased to repair a 4 X 3 area of rotted flooring in the bathroom. The electrical wall plates were missing, the smoke alarm was smashed, the door stops were missing and the blinds were removed from the windows and were damaged. The landlord purchased a new bathroom sink handle as the handle was missing. Door knob sets were purchased for the bathroom and entry. The front door lock was broken and the handles were bent. The landlord purchased faucet connectors for the bathroom and kitchen as they were missing. The kitchen sink strainer and plugs could not be found. Several sets of faucet handles were purchased so the landlord could obtain parts needed to repair the old plumbing without having to completely replace the fixtures. A front door bolt, hinges for the bathroom door, deck screws for the bathroom floor repair, adhesive of the flooring, anchors for the smoke alarm and towel hooks were purchased.

The landlord supplied a written list of dates worked, the hours spent on labour each day and a brief description of the work completed each day.

One of the tenants' friends pulled the fire alarm. This false alarm resulted in a fee of \$150.00 imposed by the fire department including the cost to repair the alarm glass. This was paid by cash.

The landlord has claimed the cost of travel time for his employee in the sum of \$60.00 for fuel.

The kitchen window was broken after a friend of the tenants' threw a rock from the parking the lot. The landlord paid cash for this repair.

The landlord claimed the cost of repairing the entry door to the building which he believes the tenants' guest broke by repeatedly forcing it open. The landlord said he paid cash for this repair.

The agent agreed that after her son vacated the unit "looked horrible." The agent does not dispute the general state of the home but objected to some specific costs claimed by the landlord.

The agent said that when her son moved into the unit it was in generally clean and in good condition.

The agent said that the total number of hours spent completing repair in this small unit seems excessive. On the same date that flooring was installed two people worked a total of 12 hours each, which seemed disproportionate given the size of the rental unit and the fact that flooring was being installed at the same time. The agent questioned how any work would be completed in the unit on the same day that the haulers were removing personal property left behind. On February 25, 2015, the date the haulers attended at the unit landlord charged a total of 13 hours labour.

During the hearing the landlord said he worked around the carpet layers. On March 3, 2015, the same day the flooring was installed, the landlord worked on the kitchen cupboard doors and frames; he painted the cupboards with three coats of paint and that he went to the unit at 7:30 a.m. to let the carpet people into the unit.

The agent said that the charge for hauling seemed excessive. The landlord said that the personal property had to be taken down 4 flights of stairs and sorted. The workers also took more time due to the health risk posed by needles. A surcharge of \$160.00 was imposed due to "lots of needles;" as indicated on the February 25, 2015 invoice.

The agent said that even though her son cut a hole in the carpet, the carpet was older; perhaps 10 to 20 years. The carpet had been clean at the start of the tenancy but showed its age. The old carpet was replaced with new.

The agent said that the window damage was caused by a person known to the tenant but he was not an invited guest. That person threw a rock at the window of the unit and the damage was not the result of any action by the tenant.

The tenant told the agent that the unit had not been fully painted, but had been touched-up before he had moved in. There was no dispute that the unit needing painting at the end of the tenancy. The agent did not understand why the whole ceiling was repainted when only a small area had been in need of paint. The agent said that the amount of paint purchased for such a small unit seems excessive.

The invoices supplied by the landlord included the purchase of two 18.2 litre cans of eggshell paint, two 3.70 litre containers of rust resistant paint and 3.64 litres of eggshell

paint totalling \$320.32 plus tax. The landlord purchased four paint brushes totalling \$14.91.

The agent said that during the tenancy the front door would not close properly. The door rattled and was very old. The locks and deadbolts had been repeatedly changed and repaired over the years.

The agent testified that the kitchen lino was not properly installed; older lino had been covered by another sheet which was not properly installed as it was just sitting on the old flooring and not attached to the floor around the edges.

The building entry door damage was caused by many people and guests of other tenants who had figured out if they pulled on one side of the door and pushed on the other, the entry system would fail and allow the door to open. The tenants' guests were not the only people who knew how to enter by pushing on the door as she had seen other people entering the building in this manner.

The agent said she could not comment on the balance of materials purchased by the landlord. The agent did dispute the sum claimed for fuel as it appeared multiple trips were made to purchase items that could have been purchased at the same time.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

From the evidence before me I find that the rental unit was approximately 304 square feet in size. This finding is based on the measurements supplied by the landlord

The landlord has made a claim naming the two co-tenants. There was no dispute that damage was caused, it is the total sum claimed by the landlord that is in dispute.

Section 37(2) of the Act provides:

*2) When a tenant vacates a rental unit, the tenant must*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

From the evidence before me there is no dispute that the rental unit was left in a state that was well outside of that required by the legislation. The photographic evidence provided convincing evidence that the landlord was faced with a considerable expense to bring the rental unit back to a state where it could be suitable for occupation. This was not in dispute.

Awards for damages are intended to be restorative. Where an item is replaced as a result of damage and that item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. Policy suggests a landlord should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. An arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. The landlord submitted no evidence to support the age of the fixtures, but there was testimony that fixtures in this unit were older.

There was a large amount of items left in the rental unit by the tenant and no dispute that multiple hypodermic needles were mixed in with those belongings. I find that the cost of hauling provides a true reflection of the cost that could be expected to remove items from a fourth floor unit with no elevator. Items had to be sorted, carried down four flights of stairs and caution had to be used, given the potential risk to health posed by the needles. Therefore, I find that the claim for hauling is supported.

In the absence of any evidence of the age of the flooring I find that this portion of the claim is dismissed. There is no doubt that the tenant caused damage to these fixtures; however, the landlord has a responsibility to prove that the fixtures were not already beyond their useful life. From the evidence before me I find that it is likely the carpet and lino were well beyond 10 years old; the useful life suggested by policy. The landlord did not dispute that the lino had not been properly installed, leading me find it was placed over the old original flooring as some sort of temporary arrangement.

The agent raised the issue of the amount of paint purchased for this small unit and I find that point has some merit. From the invoices before me it appears the landlord purchased over 47 liters (approximately 12 gallons) of paint to cover the walls and ceiling of a 304 square foot rental unit. I find that the amount of paint exceeds the sum that could reasonably be expected to be used to cover the walls, even if two coats were required. Therefore, I have reduced the sum for paint costs by one third. This includes a deduction for the cost of brushes, which can be reused by the landlord.

I have reviewed the invoices supplied by the landlord and find that they provide a fair representation of the costs incurred for items required to repair the rental unit.

There was no evidence before me to support the landlords' submission that the tenant and his guests alone caused damage to the front door of the building. If the landlord knew the door could be opened by pushing or pulling on it would seem reasonable to have repaired the door, so that it could not be opened in that manner. The agent said that

she saw other individuals opening the door in this manner. Therefore, in the absence of evidence that the tenant and his guests were solely responsible for damage to the front door I find this portion of the claim is dismissed.

A tenant is responsible for any damage caused to the rental unit by a guest. There was no evidence before me that the person, who broke the window, by throwing a rock from the parking lot, was invited on to the property by the tenant. The tenant may have known who this person was, but I have accepted the agents' submission that the person who broke the window was not invited onto the property by the tenant. Therefore, I find that the claim for the window replacement is dismissed.

The landlord provided no evidence substantiating the claim for the fire alarm cost. The landlord did not supply the date this occurred or any documentation indicating costs incurred. There was no evidence before me that proved a guest of tenant's pulled the alarm. Therefore, I find that this portion of the claim is dismissed.

From the evidence before me I find that the landlords' agent and a second worker were required to spend a considerable period of time restoring the unit. I can find no reason to question the number of hours that have been claimed for labour. Therefore, I find the landlord is entitled to the sum claim for wages. The amount of time spent is significant; but the evidence before me showed a rental unit that would have required a significant amount of time to restore.

I have reduced the claim for fuel costs to what I find is a reasonable sum after considering the supplies that were required and the amount of driving that would have been required to pick up parts and supplies.

Therefore, I find, pursuant to section 67 of the Act, that the landlord is entitled to the following compensation:

	Claimed	Accepted
Wages 193 X \$25.00/hour	\$4,825.00	4,825.00
Hauling	926.00	926.00
Carpet and lino replacement/installation	1,493.78	0
Paint	403.56	269.04
Home Depot – supplies	403.70	403.70
Home hardware – supplies	47.47	0
Door electronic device	310.00	0
Window replacement	310.00	0
Fuel costs	60.00	20.00
False fire alarm costs	150.00	0
<b>TOTAL</b>	<b>\$8,869.51</b>	<b>6,443.74</b>

The balance of the claim is dismissed.



Pursuant to section 72 of the Act I find that the landlord may retain the \$362.50 security deposit in partial satisfaction of the claim.

As the landlords' application has merit I find, pursuant to section 72 of the Act, that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$6,181.24. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

### Conclusion

The landlord is entitled to compensation in the sum of \$6,423.74. The balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: September 18, 2015

---

Residential Tenancy Branch

