



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, to retain the security deposit and, to recover the filing fee.

This hearing occurred over two days, July 21, 2015 and September 30, 2015. Both parties appeared at both days of the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Preliminary Matters regarding Photographic Evidence

At the outset of the July 21, 2015 hearing, the Landlord confirmed they had received the Tenant's evidence, which comprised of 10 photos, the day before the hearing (July 20, 2015). The Tenant's advocate stated that the evidence had been submitted to the Branch on July 14, 2015; nevertheless, that evidence was not available to me at the time of the first day of the hearing. In my interim decision dated July 21, 2015 I ordered that the Tenant resubmit to the Branch the 10 photos her advocate stated had submitted on July 14, 2015.

At the date set for the continuation, on September 30, 2015, the Landlord referenced details in his photographic evidence which were not readily apparent in the copies submitted in evidence. As the copies in evidence were faxed I directed the Landlord to resubmit his photos by no later than October 7, 2015.

Both parties complied with my orders with respect to resubmitting their photographic evidence such that I had clear colour copies from both parties.

Aside from these issues, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

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.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

#### *Landlord's Evidence*

The Landlord testified as to the terms of the tenancy and stated as follows: the tenancy began July 27, 2013; the Tenant paid rent in the amount of \$1,100.00 per month as well as paying a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$550.00 (collectively referred to as the "Deposits"). The Landlord testified that the tenancy ended on November 30, 2014.

Introduced in evidence were copies of the move in and move out condition inspection reports. The Landlord testified that the Tenant refused to participate in the move out condition inspection despite the fact that he provided her three written notices of opportunities to do so. In support he filed in evidence a document titled "Record of C.I.R. Opportunities" as well as a "notice of Final Opportunity".

The Landlord also completed a Monetary Orders Worksheet, dated December 13, 2014, in which he claimed the following:

carpet cleaning	\$265.55
3 hours of Cleaning	\$75.00
Replacement shelf and frame for refrigerator	\$201.43
Locksmith charges for when Tenant changed the locks without the Landlord's consent, as well as at the end of the tenancy when the Tenant failed to return the keys	\$87.73
Chemicals for pet urine removal	\$24.85
Deadbolt and bi-fold door replacement cost	\$101.49
Materials for removing pet urine from garage floor	\$29.65
Paint, drywall mud, light bulbs and toilet seat	\$184.76
Countertop refinishing kit	\$224.66
General labour	\$105.00
<b>TOTAL CLAIMED</b>	<b>\$1,300.12</b>

The Landlord provided copies of the receipts for each of the amounts claimed above.

As noted, the Landlord also submitted photos of the rental unit which depicted the following:

1. a broken bi-fold door;
2. a broken light bulb;
3. a missing plastic hinge on the toilet seat;
4. missing countertop side trim;
5. wall damage;
6. mismatched paint; and
7. dirt and personal items on top of the refrigerator.

#### *Tenant's Evidence*

In general response to the Landlord's claims, the Tenant stated that the rental unit as not new, and that aside from the broken refrigerator shelf, she did not caused the alleged damage to the rental unit and states that any damage either existed prior to her moving in, or was of a minimal nature and simply normal wear and tear.

In specific response to the amounts claimed the Tenant stated as follows:

- She did not clean the carpets and was agreeable to paying the cost of **carpet cleaning**.

- She opposed the Landlord's request for reimbursement for the cost of **cleaning** as she testified that she cleaned the rental unit to an acceptable standard.
- She confirmed she broke the refrigerator shelf when she was cleaning it, but claimed the Landlord could have purchased the shelf from a dedicated appliance part store such that he could have reduce the replacement cost. The Landlord claimed \$201.43 for this replacement shelf, and the Tenant provided evidence that such a shelf could be obtained for the cost of \$64.81 in addition to tax.
- She confirmed she changed the locks and stated was therefore agreeable to paying the cost of two **locks**.
- She opposed the Landlord's request for reimbursement for cleaning and supplies associated with alleged pet urine and feces. She testified that she had two cats, one was litter trained and one toilet trained. She further stated that her cat litter was in the bathroom, not the garage, and that any stains or animal urine in the garage were a result of the previous tenants. She also claimed that at the beginning of the tenancy she remarked to the Landlord about the stained garage floor and he responded that he was aware it was a garage and not in good condition.
- Additionally, she stated that the supplies used by the Landlord were not required according to the product specifications such that the Landlord purchased unnecessary items.
- She stated that the bi-fold door was broken at the start of the tenancy in that the door kept coming off the track. She stated that this was why she removed the door from the track.
- She stated that at the start of the tenancy the toilet seat was already broken as evidenced by her photos.
- She stated that the previous tenants left holes in the walls, and that in any case, the Landlord purchased large gallons of paint, rather than smaller pint sizes, thereby increasing his cost.
- She stated that the kitchen counters and trim were scratched, stained and chipped when she moved in and she opposed the Landlord's claim for costs associated with refinishing the counters.

With respect to the Landlord's claim that she refused to participate in the move out condition inspection, the Tenant stated that she was not able to attend as she required medical attention for a cut she received when the refrigerator shelf she was cleaning broke in her hand. She advised the Landlord of this by text message, which was submitted in evidence. Also introduced in evidence was an email from the Tenant to the Landlord wherein she wrote that her doctor advised her not to participate in the move out inspection. The Tenant further submitted that she did not know that she was able to propose another time for the inspection.

Also introduced in evidence by the Tenant were photos of the rental unit, taken on July 27, 2013, the day the Tenant received the keys to the rental unit, and which depicted the following:

- a broken plastic hinge on the toilet seat;
- significant stains on the garage floor,
- damage to the cupboard trim under the kitchen sink;
- nicks, stains and scratches on the kitchen countertop;
- large chips in the countertop side trim;
- a drill hole in the bathroom which was caused by the previous tenant; and
- existing wall damage.

The Tenant submitted further photos which indicate they were taken on October 10, 2014 and which she has noted confirm the counters are in satisfactory condition. Notably, in this photo, the side trim is intact.

#### *Landlord's Reply to Tenant's Submissions*

The Landlord confirmed that he was aware that the Tenant had taken photos at the start of the tenancy and that she was supposed to provide him copies at that time and never did.

The Landlord confirmed that he did not have any knowledge of the previous tenants and whether they had pets which might have caused the urine staining on the garage floor. Despite this, he testified that when he walked into the garage after the Tenant had moved out, he could smell the pet urine/feces and as such he maintained that it was the Tenant's pets which caused the damage.

The Landlord confirmed that the shelf bracket was missing such that he could not simply buy the glass shelf as suggested by the Tenant. He also stated that he ordered

the replacement part from the department store from which he purchased the shelf, and that he did not know it would be possible to order it elsewhere.

In response to the Tenant's suggestion that he should have bought smaller amounts of paint the Landlord testified that he used over half a gallon which is more than two pints, and as such, it would have been more expensive to buy the paint in smaller containers.

### *Move in Condition Inspection Report*

The move in Condition Inspection Report notes the following deficiencies relevant to the Landlord's claims:

- small nicks, cracks and stains on the kitchen countertop;
- old stains, oil on floor, and garage door bent;

### Analysis

The Tenant consented to reimbursing the Landlord for the cost of the **carpet cleaning (\$265.55)** and as such, pursuant to section 63 of the *Act*, I record that agreement in this my decision.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove his claim.

The parties disagreed as to whether the rental unit required **cleaning** when the Tenant vacated. The Landlord failed to submit any photos which would support a finding that three hours of cleaning were required. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, I find the Landlord has failed to prove that three hours of cleaning were required at the end of the tenancy and as such I dismiss his claim for \$75.00.

I accept that the Tenant broke the shelf in the refrigerator while tending to its cleaning. It is unfortunate that the Tenant cut her hand requiring medical attention. I accept the Landlord's evidence that the shelf bracket and hardware were also replaced as they were missing. Although the Tenant located replacement parts which were less expensive than those purchased by the Landlord, I accept his evidence that he was unaware that he could purchase the shelf from an appliance part store. It is notable that the quote provided by the Tenant only included the glass shelf, not the bracket or hardware and it is impossible to determine what the cost would have been had all required pieces been ordered through the appliance part store. In consideration of the above, I award the Landlord the amount claimed, **\$201.43**, for the cost of replacing the shelf, bracket and hardware.

The Tenant confirmed she changed the locks during the tenancy and failed to return the keys. Accordingly, I find the Landlord has met the burden of proving his claim for compensation for the locksmith in the amount of **\$87.73** and the cost of the new lock in the amount of **\$28.76** (\$25.68 plus 12% tax).

I am persuaded by the photos submitted by the Tenant, as well as the notations on the incoming condition inspection report that the garage floor had significant staining at the start of the tenancy. While I accept the Landlord's evidence that animal waste was detected at the end of the tenancy, I am unable to find that it was caused by the Tenant's pets as the Landlord failed to submit any evidence as to similar tests done at the beginning of the tenancy. As it is equally probable the stains were caused by the previous tenants' pets, I dismiss the Landlord's claim for any expenses associated with cleaning the garage floor, including the costs of chemicals, cleaning supplies, and plastic.

I accept the Landlord's evidence that he **bi-fold** door was damaged during the tenancy. The Tenant conceded that it regularly fell off the track such that she removed it. Accordingly, I award the Landlord the cost of the door, namely **\$59.33** (\$52.97 in addition to 12% tax)

I accept the Tenant's photographic evidence that the **toilet seat** plastic hinge was missing at the start of the tenancy. The photos are date stamped and the Landlord confirmed he was aware they were taken. Accordingly, I dismiss the Landlord's claim for the cost to replace the toilet seat as I find it was missing the hinge cover when the tenancy began.

It is clear, from the photos submitted by both parties that a portion of the countertop trim was missing at the end of the tenancy. As well, it is equally clear that the countertop was not new, and had staining, chips and scratches at the start of the tenancy. I am persuaded by the Tenant's photos taken at the start of the tenancy, as well as the incoming condition inspection report that the countertop had such pre-existing damage. As such, I find the Tenant is responsible for 10% of the cost of the countertop refinishing costs claimed (\$224.66) and I award the Landlord **\$22.47**.

I accept the Landlord's evidence that he replaced light bulbs and attended to painting of the rental unit. I am persuaded by the Landlord's photos that such painting was required due to damage caused by the Tenant during the tenancy. I further accept that by purchasing paint in a larger format, he reduced the overall cost. I award the Landlord the sum of **\$156.78** for the cost of paint and paint supplies.

The Landlord claimed \$105.00 for 7 hours of general labour. I accept the Landlord replaced the refrigerator shelf, replaced the locks, installed a new closet door, and attended to painting. Based on the Landlord's evidence I find that the majority of the Landlord's time would have been associated with refinishing the counter top and repairing the garage flooring. As I have found the Tenant is only responsible for 10% of the countertop refinishing and none of the cost of the garage floor cleaning, I award the Landlord 30% of the amount claimed for general labour, namely **\$31.50**.

As the Landlord's claim had merit, I also award him the **\$50.00** filing fee for a total monetary claim of **\$903.55**. For greater clarity, and to summarize, I award the following:

carpet cleaning	<b>\$265.55</b>
Replacement shelf and frame for refrigerator	<b>\$201.43</b>
Locksmith charges for when Tenant changed the locks without the Landlord's consent, as well as at the end of the tenancy when the Tenant failed to return the keys	<b>\$87.73</b>



Deadbolt replacement cost	<b>\$28.76</b>
bi-fold door replacement cost	<b>\$59.33</b>
Cost of Paint, drywall mud, light bulbs	<b>\$156.78</b>
10% of Countertop refinishing kit cost	<b>\$22.46</b>
30% of General labour costs	<b>\$31.50</b>
Filing fee	<b>\$50.00</b>
<b>TOTAL CLAIMED</b>	<b>\$903.55</b>

I authorize the Landlord to apply the **\$1,100.00** Deposits against the amount awarded and Order that the Landlord pay the Tenant the difference, namely **\$196.45**. The Tenant is granted a Monetary Order in this amount and must serve the Order on the Landlord. Should the Landlord fail to pay, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The Landlord is entitled to \$903.55 in monetary compensation. As he holds \$1,100.00 in Deposits, he must return \$196.45 of the Deposits to the Tenant.

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: October 29, 2015

---

Residential Tenancy Branch

