



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC WELLFARE RESOURCE INVESTMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenant RM (tenants' agent) attended the hearing and acted as agent for all tenants. The landlord's agent attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to cross-examine one another.

The landlord provided a written statement setting out that the landlord served the tenants' agent with the dispute resolution package on 10 September 2015 by registered mail. The landlord provided me with a Canada Post tracking number and receipt that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Prior Decision on Security Deposit

This tenancy was the subject of a prior application by the tenants' agent. That application was heard 21 April 2015. The prior arbitrator awarded the tenants' agent double the tenants' security deposit and recovery of the filing fee.

*Res judicata* is the legal doctrine preventing the rehearing of an issue that has been previously settled by a judicial decision. In this case, there is a final and binding earlier decision between these parties on the issue of the security deposit entitlement. On this point, I find that I am bound by the finding of the previous arbitrator. Accordingly, I cannot make any further determination with respect to the security deposit.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

### 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 submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy was a short-term tenancy (lasting less than two months). The tenancy began 5 June 2015 and ended on or about 31 July 2014. Rent for the period 5 June 2015 to 31 July 2014 totaled \$11,000.00.

There were no condition move in or move out inspection reports created in respect of this tenancy. The landlord's agent admits that the landlord did not complete a condition move in inspection report but points to the email set 7 June 2014 from the tenant AM that indicates that the home was in "good condition".

The parties entered into a tenancy agreement. I was provided with a copy. The agreement is signed by the landlord and twelve tenants. The addendum is signed by thirteen tenants.

The addendum contemplates other occupants living in the rental unit:

*Tenant can use 8-9 rooms now , from main floor, second floor, and third floor. Room which is no tenants from June 5<sup>th</sup> till June 27<sup>th</sup>, from June 29<sup>th</sup> till July 31<sup>st</sup>, the whole third floor has been rented out so only main floor, and second floor with 6 bedroom can be available for use, and need quite the cooking area can only use 1<sup>st</sup> floor cooking area after June 28<sup>th</sup> 2014.*

[as written]

The tenants' agent testified that there were two other families living in the rental unit and upward of twenty occupants. The landlord's agent denies that there were other tenants living in the rental unit.

The addendum sets out the tenants' responsibility for utility costs:

*Landlord will support free wifi and high speed internet .landlord will support 100 dollars each month for bc hydro and gas used by tenants,but tenant need pay balance values within 3 days after received bill noticed.*

[as written; emphasis added]

The addendum also sets out the purported responsibility for repairs:

*Tenants will be held accountable for fees of any dysfuctions or loss of divices such as keys,fobs,microwave,stove,overn,fridge ,dishwasher,washer,dryer or any other appliances, thisis tenants' responsibility to contact management for repairs.*

[as written]

There is a handwritten note at the end of the tenancy agreement:

*Tenants confirm house good condition*

The landlord's agent testified that the tenants damaged various items in the rental unit. The landlord's agent testified that the wall paper was peeling. The landlord's agent testified that the rental unit was fully renovated approximately five years ago. The landlord's agent testified that the heat register was replaced approximately three years ago.

The landlord's agent testified that the landlord hired professionals to complete the repairs. The landlord's agent testified that the employee JH paid a contractor to fix various items.

The landlord's agent testified that the rental unit took two days to clean.

The tenants' agent testified that the tenant AM emailed the landlord's agent on 8 June 2014 setting out the list of deficiencies in the rental unit. The landlord's agent denies that there was a list of deficiencies or damaged items. The landlord's agent's attention was drawn to the email from the landlord's email acknowledging fixed deficiencies. The landlord's agent later acknowledged that there were lights that needed to be fixed but that all outstanding items had been fixed.

The tenants' agent testified that the garbage left behind was not the students'.

I was provided with photographs by the landlord. The landlord's agent testified that the photographs were taken 3 August 2014. The photographs show:

- some garbage bags and a couch;
- dog hair and faeces;
- a heating register brace that is partially detached;
- a tear in wall paper;
- some displaced slats in venetian blinds;
- food in the bottom of a stove burner;
- staining at the bottom of a banister; and
- a bucket of dirty water.

The landlord makes the following claims:

**A: \$2,875.62:**

- Inadequate basement dryer performance;
- Inadequate refrigerator/freezer cooling;
- Broken stair railing;
- Broken and missing window screens;
- Burn marks and stains on furniture and counters;
- Stains on time in basement bathroom;
- Rotten baseboard in basement bathroom;
- Peeling wallpaper;
- Broken towel bar;
- Broken toilet lever;
- Damaged baseboard heater covers;
- Burned out or missing lightbulbs;
- Broken and misadjusted cabinet hinges;
- Broken bath drain; and
- Broken door track.

**B: \$1,485.00**

- Cleaning house; and
- Yard work.

**C: \$280**

- Broken washing machine; and
- Washing machine contained spoon.

**D: \$1,362.33:**

- Hydro:  $\$435.52 + 163.72/2 = \$299.46$ ; and
- Gas:  $\$1,011.78 + 738.94/2 + 187.51 = \$1,062.87$ .

The landlord has elected to limit its claim to \$5,000.00.

I was provided with a receipt dated 6 August 2014 prepared by JH. The receipt is in the amount of \$2,875.62 and lists many items that are purportedly the subject of the invoice. The list is identical to the landlord's submissions and the email from S.

I was provided with a receipt dated 3 August 2014 prepared by JH. The receipt is in the amount of \$1,485.00 and lists items that were purportedly cleaned. The list is, again, identical to the list found in the landlord's submissions and the email from R.

I was provided with a receipt dated 3 August 2014 and prepared by JH. The receipt is in the amount of \$280.00 and sets out items in relation to the broken washing machine.

The landlord's agent testified that these receipts were prepared by an employee of the landlord, JH. The landlord's agent testified that the amounts expended were paid in cash to various tradespersons.

I was provided with a utility invoice for gas dated 16 June 2014. This invoice is for the period 15 May 2014 to 16 June 2014. The invoice is for a total of \$1,011.78 and includes arrears of \$759.95. The total current use charges amount to \$251.83.

I was provided with a utility invoice for gas dated 17 July 2014. This invoice is for the period 16 June 2014 to 17 July 2014. The invoice is for a total of \$187.51 and includes arrears of \$11.78. The total current use charges amount to \$175.73.

I was provided with a utility invoice for gas dated 18 August 2014. This invoice is for the period 17 July 2014 to 18 August 2014. The invoice shows a total credit of \$738.94 and includes a carried over credit in the amount of \$824.27. The total current use charges amount to \$85.33.

I was provided with a utility invoice for hydro dated 13 June 2014. This invoice is for the period 11 April 2014 to 11 June 2014. The invoice is for a total of \$163.72 and includes a carried over credit in the amount of \$2.48. It also includes late payment charges totalling \$9.58. The total current use charges amount to \$156.62.

I was provided with a utility invoice for hydro dated 14 August 2014. This invoice is for the period 12 June 2014 to 12 August 2014. The invoice is for a total credit of \$4.05 and includes a carried over credit in the amount of \$436.28. It also includes a late payment charge in the amount of \$2.46, an interest credit in the amount of \$0.03 and a security deposit charge in the amount of \$219.00. The total current use charges amount to \$210.80.

### Analysis

The landlord claims the cost of repairing various items and cleaning (A: \$2,875.62; B: \$1,485.00; and C: \$280).

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. The landlord alleges that the tenants failed to return the rental unit to the landlord in a condition that complies with subsection 37(2) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenants' agent testified that there were other occupants living in the rental unit. The landlord's agent testified that there were no such other occupants. Where testimonies conflict, it is necessary for me to make an assessment of credibility. In this case the tenancy agreement addendum specifically sets out that other occupants would be occupying the rental unit from 29 June 2014 until the end of the tenancy. On this point, I find that the tenants' agent is more credible than the landlord's agent as the tenants' agent's testimony is more consistent with the documentary evidence. On the basis of the addendum to the tenancy agreement and the testimony of the parties, I find that the tenants did not have exclusive possession of the rental unit. I find that it is more likely than not, that other occupants had access to the rental unit.

As other parties had access to the rental unit, there is insufficient evidence to show that the tenants caused the damage to the common areas of which the landlord complains. As well, as there is no condition move in inspection report, the landlord has denied itself the best evidence of the condition of the rental unit at the beginning of this very short tenancy. Further, the landlord has not established that the damage of which it complains is not the result of wear and tear. Finally, the landlord has not shown what if any loss resulted from the alleged damage. The landlord has provided receipts which purported to summarize a number of cash based transactions. These receipts contain

highly identifiable language seen in emails sent by R and S and were created by the landlord's employee JH. I find that by failing to show original receipts from various contractors, the landlord has failed to show the losses that resulted from any alleged damage. On this basis, I find that the landlord has failed to show on a balance of probabilities its entitlement to the losses claimed in sections A, B and C of its claim.

The landlord seeks \$1,362.33 as payment for the tenants' utility use in the course of the two-month tenancy. The landlord claims hydro use in the amount of \$299.46 and gas use in the amount of \$1,062.87. The tenancy agreement sets out that the tenants will pay for their use of utilities less a \$100.00 monthly abatement.

The total of the hydro invoices (adjusting for the arrears, credits and other charges) is \$231.01 for the period 11 April 2014 to 12 August 2014. The total of the gas invoices (adjusting for the arrears, credits and other charges) is \$512.89 for the period 15 May 2014 to 18 August 2014. The landlord has made serious errors in calculating the utility amount and has claimed nearly double the amount that the invoices could possibly substantiate. Further, the tenants did not have exclusive occupation of the rental unit from 29 June 2014 until the end of the tenancy. According, it is impossible to determine the tenants' use for the period of shared occupation. Finally, the invoices cover a period prior to the tenants' occupation of the rental unit. As such, the landlord has not shown that a straight per diem calculation will result in the tenants being charged for their use as the tenancy addendum stipulates. On these bases, I find that the landlord has failed to show, on a balance of probabilities, its entitlement to the utility amounts in "D".

As the landlord has not been successful in its application, it is not entitled to recover its filing fee from the tenants.

### Conclusion

The landlord's application is dismissed without leave to reapply.

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: November 23, 2015

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Residential Tenancy Branch

