



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order totalling \$ 3,677.65 for compensation for loss of revenue, cleaning and repairs to the rental unit, and to recover the filing fee for this proceeding. Both the landlord and tenants attended the telephone conference hearing. The tenants admitted service of the application as well as all the landlord's evidence.

The parties were given the opportunity to be heard, to present sworn testimony and other evidence and to make submissions. The landlord submitted numerous packages of evidence all of which were not numbered or organized in a chronological order making it difficult for all of the parties to identify items at the hearing. Only documentary evidence that had been traded between the parties, which was specifically referred to by the landlord at the hearing, was admitted as evidence and was considered in my deliberations.

### Issues(s) to be Decided

Is the landlord entitled to compensation if so, how much?

### Background and Evidence

Based upon the evidence of the landlord I find that this one year fixed term tenancy started on October 1, 2014 and ended on September 30, 2014<sup>5</sup> when as required by the tenancy agreement, the tenants moved out at the end of their tenancy. Rent was \$ 1,500.00 per month payable in advance on the 1st day of each month. The tenants paid a security deposit of \$ 750.00 on October 5, 2014.

The landlord produced a move in inspection report dated September 30, 2015 which the tenants refused to sign. The landlord alleged that because the tenants kept a messy suite, and had not

replaced closet doors they removed, his ability to re-rent the unit was compromised and the unit was therefore not rented again until the middle of November. The landlord is therefore claiming one and one half's rent amounting to \$ 2,475.00 for the loss of revenue. He admitted to only showing the unit to four prospective tenants two of whom refused to rent the unit because the kitchen was messy and the tenants had not replaced the closet doors. He claimed that the tenants were offered a renewal of the unit but they refused to sign the agreement. He admitted to knowing that the tenants were not going to renew their tenancy agreement by August 2015.

The landlord claimed the unit was not cleaned sufficiently and relied upon several pages of photos showing deficiencies. The landlord claimed \$ 250.00 for over ten hours of professional cleaning.

The landlord claimed for \$ 498.75 for an estimate for repainting and wall repair expenses for the unit. He testified that the tenants left excessive nail holes on the walls and they needed to be repaired and repainted. He admitted that part of that estimate included a wall repair of a preexisting crack. He admitted that the paint was about one year old when the tenants moved in.

The landlord claimed for a \$ 100.00 move out fee assessed by the strata council. The tenants admitted responsibility for this expense as well as the carpet cleaning cost of \$ 123.90.

The landlord claimed for \$ 80.00 equal to the cost of a broken front door key fob as the key ring part was broken off although it was still functional.

The landlord also claimed for \$ 100.00 "admin costs" representing his photocopy and registered mail expenses for this application.

Particulars of the landlord's claim are:

Loss of revenue (October and ½ November 2015)	\$ 2,475.00
Interior cleaning	\$ 250.00
Repair to wall and painting	\$ 498.75
Carpet cleaning	\$ 123.90
Key fob replacement	\$ 80.00
Strata Move out fee	\$ 100.00
Admin fees	\$ 100.00

The tenants denied any responsibility for the loss of revenue because they testified that the unit was kept immaculately. They testified that the messy kitchen complained about by the landlord consisted of a few crumbs on the counter and a full garbage bin. The tenants testified that they were required to be notified prior to showing the unit to prospective tenants and the landlord only notified them three or four times. They also claim they offered to sign a new tenancy agreement for five more months at a rental increase of \$ 50.00 per month which the landlord refused to sign. They say the landlord did not suffer any loss because of their fault.

They claim there is nothing wrong with the key fob as it still works although they admit breaking it.

The tenants admit to making numerous nail holes in the walls, and say that they had done some repairs but had not completed patching all the holes. They also testified that the wall needed to

be repaired any way because of a preexisting crack and that they offered to repair the wall on the day of the move out inspection but the landlord refused to permit them.

The tenants testified that they cleaned the unit thoroughly and that the landlord's standards are too high. They also claimed they offered to clean the unit again on the move out inspection day but the landlord refused.

The tenants admitted responsibility for the carpet cleaning and move out charges but deny responsibility for all other claims.

### Analysis

The landlord's photos clearly depict parts of the unit that were not cleaned on the move out inspection. Having reviewed the photos of the landlord I accept his evidence that the unit was not sufficiently cleaned by the tenants at the end of the tenancy.

The tenants admitted to making numerous holes and not completing the repairs. I find that the amount of holes and unfinished repairs attempted by the tenants necessitated repainting and patching well beyond ordinary wear and tear.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find it's unlikely that the tenants offered to make any repairs or conduct further cleaning. I would think that if the tenants wanted to do extra cleaning or make repairs they would have started to do so upon the move out day. There is no evidence of such attempts. I reject the tenants' evidence that the landlord prevented them from cleaning or making any wall repairs as not making any sense and not supported by the surrounding facts. The tenants had an obligation to make these repairs and clean the unit pursuant to section 32 (2) and (3) of the Act.

### **Landlord and tenant obligations to repair and maintain**

**32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.**

**(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.**

(4) A tenant is not required to make repairs for reasonable wear and tear.

(my emphasis added)

I allow the landlord's entire claim for **\$ 250.00** for cleaning as reasonably incurred.

Pursuant to Policy Guideline 40-5 of the Residential Tenancy Act I find that the useful life expectancy of interior paint is 4 years. As the interior paint was at least one year old prior to the commencement of the tenancy and the duration of the tenancy was for one year, I would ordinarily find the landlord is entitled to 80% of the cost of the repainting. However as the landlord admitted that the crack repair was also included in his estimate of \$ 498.75, I have allowed only 50 % of the total estimated cost of wall repair and painting amounting to **\$ 249.38**.

The landlord has the burden of proof regarding the loss of revenue. He must establish that the tenants caused such a loss on the balance of probabilities. His testimony was that he showed the unit to only four people and that two declined because it was so messy, and the closet doors were not replaced that his ability to rent it was "compromised by the tenants." He was not able to produce any independent witnesses or corroborative evidence. The tenancy was for a fixed term ending on September 30, 2015. The tenants vacated on that date. I find that the landlord's evidence that his inability to re-rent was caused by the fault of the tenants to be of such a weak quality that I cannot accept that any acts or neglect on the tenants' part were the proximate cause of his loss of revenue. I have therefore dismissed that claim.

The tenants admit breaking the key fob. I accept the landlord's evidence that the part broken off is an essential component as it allows the unit to be fastened to key chain. I allow the claim to replace it at a cost of **\$ 80.00**.

The tenants accepted responsibility for the carpet cleaning at **\$ 123.90** and move out strata fee of **\$ 100.00**.

I have dismissed the landlord's claims for "admin fees" consisting of costs incurred to prepare for this hearing such as photocopies and registered mail, as ordinary business expenses that all parties must bear.

The landlord has proven a total claim of \$ 803.28. As the landlord was successful, I have allowed the filing fee of \$ 50.00 for a total claim of \$ 853.28. I permit the landlord to retain the tenants' security deposit in partial satisfaction of the claim and grant him a monetary Order for the balance owing of \$ 103.28. I have dismissed all other claims.

### **Calculation of Monetary Award**

Interior cleaning	\$ 250.00
Repair to wall and painting (50%)	\$ 249.38
Carpet cleaning	\$ 123.90
Key fob replacement	\$ 80.00
Strata Move out fee	\$ 100.00
Landlord's filing fees	\$ 50.00
Less security deposit	- \$ 750.00
<b>Total Monetary Award</b>	<b>\$ 103.28</b>

### Conclusion

In summary I ordered that the tenants pay to the landlord the sum of \$ 803.28 in respect of this claim plus the sum of \$ 50.00 representing the filing fee for a total of \$ 803.28. I order the landlord to retain the security deposit of \$ 750.00. I grant the landlord a Monetary Order for the remainder in the amount of **\$103.28** and a copy of it must be served on the tenants. If the amount is not paid, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims made by the landlord.

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: November 30, 2015

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Residential Tenancy Branch

