



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 689352 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the tenants' security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The tenant, C.B. called in and participated in the hearing. Ms. L.H. who is the mother of the tenant T.C. called in as the agent and representative of her son, who was unavailable to attend the hearing. The parties exchanged documents, digital evidence and photographs before the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for the cost to repair damage to the rental unit and if so, in what amount?

### Background and Evidence

The rental unit is an apartment in North Vancouver. The tenancy began on May 1, 2014. The monthly rent was \$1,400.00, payable on the first of each month. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 at the start of the tenancy. The respondent, Ms. S.B. is the mother of the tenant, C.B. she signed the tenancy agreement in the capacity of a guarantor of the tenants' obligations under the tenancy agreement.

The tenancy ended and the tenants moved out of the rental unit on June 30, 2015. The landlord testified that she completed a condition inspection report when the tenants moved in and when they moved out. She did not provide a copy of the report to the tenants on either occasion. The landlord said that it was not necessary to do so because the tenants took a picture of the document with a cell phone.

In the application for dispute resolution the landlord claimed a monetary award in the amount of \$2,153.61. She made the following claims:

- Dimmer light switch. The landlord claimed that the tenants broke a light switch in the rental unit. She claimed the sum of \$317.41 for the replacement of the light switch, made up of \$113.86 for a replacement switch and cover, \$40.00 for the landlord's time to travel to the store, select and purchase a light switch, \$16.55, said to be a mileage charge and \$147.00 claimed as a charge to have an electrician install the switch.
- Faucet. The landlord testified that the tenants broke the kitchen faucet during the tenancy. She said it was an expensive faucet that was purchased approximately one year before the tenancy began. The landlord said the approximate purchase price was \$550.00; she did not provide any proof of the original purchase, but claimed that the original cost was \$624.32, inclusive of tax. The landlord said she replaced the faucet with one purchased for \$492.17. The landlord claimed for the cost of the original faucet, plus \$40.00 for her time to and from Home Depot, \$19.25 for mileage and \$150.00 to have the faucet installed. The landlord claimed \$733.57 for the faucet replacement (the actual arithmetical total of the amounts claimed by the landlord is \$833.57).
- Misc. The landlord claimed five different amounts for various items under this heading. She claimed \$156.78 for light bulbs, a filter for a range hood fan and \$40.00 for time spent purchasing items and \$11.00 for mileage. The landlord claimed a further \$126.25 for curtain panels, a cabinet hinge, \$40.00 for time to and from Home Depot plus \$11.00 for mileage. The landlord claimed \$20.00 to replace a cabinet hinge. She claimed \$53.60 for paint supplies and \$40.00 for labour to repaint the interior cabinet. The landlord claimed \$100.00 for a light fixture claimed to have been broken when a co-tenant moved into the rental unit.
- Bathtub. The landlord claimed that the tenants damaged the bathtub. She had it re-glazed at a cost of \$525.00. She claimed \$140.00 said to be for her labour for a total of \$665.00 and then proposed a deduction of \$120.00 on account of pre-existing damage for a claimed amount of \$545.00.
- Garbage removal. The landlord claimed \$10.00 said to be for an additional garbage pickup charge due to excess garbage discarded by the tenants.

The landlord referred to a surreptitious recording that she made during the move-out inspection. She claimed that the tenant made admissions as to responsibility for damage during the inspection.

The tenant and the tenant's agent disputed the landlord's claims for compensation. The tenant testified that the landlord did not provide copies of the condition inspection either at move-in or upon move-out. She said she received the report as part of the landlord's evidence package on October 22, 2015. The tenants responded to each of the landlord's claims.

With respect to the dimmer switch, the tenant submitted that the dimmer slide became disconnected from the track and this occurred due to normal use. The tenant submitted that this constituted normal wear and tear and was not damage due to rough use. The tenant further submitted that the landlord's claim was exaggerated and inflated. The landlord did not replace the switch with one of comparable quality. The tenant submitted evidence that a comparable dimmer switch could be purchased at a cost of \$19.98.

The tenant testified that she discovered the kitchen faucet pull-down sprayer was found to be cracked in May, 2014, soon after the tenants moved in. She denied that the damage was caused by any negligence or lack of care on the part of the tenants. She said the defect was reported to the landlord and a photo of the damage sent to her by text message, but she never responded. The landlord denied receiving such a message from the tenants. The tenant said that the faucet continued to function, but the cracking progressed during normal use during the remainder of the tenancy. The tenant said that under sink water damage was caused by a leak from the unrepaired faucet. The tenant noted that the landlord failed to provide proof of purchase of the faucet although she claimed to have purchased it one year before the start of the tenancy. The tenant submitted that the landlord should also have determined if the faucet was under warranty by the manufacturer, given that it was supposed to be a recently purchased "high end" fixture.

The tenant said that they purchased light bulbs but did not attempt to install them because the landlord inserted a provision in the tenancy agreement that purported to make the tenants liable for any damage to the electrical system caused by the installation of incorrect bulbs. The tenant said that the landlord claimed for the cost to purchase six bulbs, but, according to her evidence only three were required.

The tenant referred to the landlord's claim for replacement curtain panels. She said that the landlord had not demonstrated that the curtains had to be replaced. She referred to

the landlord's pictures and said that they appeared to show surface marks only; she submitted that the pictures showed only minor marks or stains and she should have attempted to clean them rather than replace them. The tenant also questioned the landlord's claim for three curtain panels when her evidence suggested only two panels were marked. The tenant said that she noticed a mark on the kitchen curtain and was able to remove it with plain water and a paper towel. The tenant said the landlord had not taken reasonable steps to minimize her damages by replacing the curtains instead of attempting to clean them.

With respect to the landlord's claim for the cost to replace missing range hood filters, the tenant said there was no inspection of the filters when the tenants moved in, and in fact the filters were missing when the tenants moved into the rental unit.

The tenant testified that the landlord's claim for the cost to replace a cabinet hinge was unnecessary. She referred to the landlord's photograph and said that it showed there were two missing screws, but no damage to the hinge itself.

The tenant testified that the damage to the under sink cabinet resulted from the leaking faucet and was not the tenants' responsibility. The tenant submitted that the landlord's claims for repairs and paint were excessive and further submitted that 3.79 litres of paint fare exceeded what would be needed to paint one under sink cabinet.

The tenant denied knowledge of a broken light fixture and denied responsibility for it. She said that it was mentioned on the move-in report, but, she was not given a copy of the report and the landlord provided no documents or receipts to support a claim in any amount.

The tenant testified that the bathtub had significant chips when the tenancy started. There were chips noted on the move-in inspection. The tenant testified that she sent a photograph to the landlord showing the progression of the damage to the bathtub. The tenant said that the unrepaired chips in the bathtub finish deteriorated further under normal use during the tenancy. The tenant said that she did not use crutches in the bathtub and the landlord's supposition that the problem was worsened by the use of crutches in the tub was completely unfounded.

The tenant disputed the landlord's claim for an additional garbage charge. She said that the occupants from three separate units were moving out of the rental property at the same time and the landlord improperly blamed the tenants for excessive garbage. The tenant referred to the landlord's photographs showing items placed near the garbage bins. The tenant said the pictured items, a coffee table, bundled slats for a

bookshelf, personal items in a bag and a folded air mattress were not garbage; they were items awaiting pickup when the tenant's family was able to return with a truck.

### Analysis

The landlord claimed a monetary award of \$317.41 to replace a dimmer light switch. At the hearing she sought to reduce the claim by claiming for a less expensive switch. I have considered the evidence of the parties and I find that the landlord has not proven on a balance of probabilities that the light switch was damaged or broken due to the negligence, lack of care or rough treatment by the tenants. A dimmer light switch is not impervious to wear and tear during ordinary use. I accept the tenant's evidence that the switch failed during ordinary use. The landlord's claim for costs associated with replacing the switch is dismissed without leave to reapply.

The landlord claimed \$733.57 to replace a kitchen faucet. The faucet incorporated a pull-out sprayer. The tenant said it was found to be cracked in the first month of the tenancy. The tenant said the landlord was notified, but did not respond and the tenants continued to use the still functional faucet throughout the tenancy. The crack worsened over that time and leaked into the under sink cabinet. The landlord denied having been notified of the problem. I accept the tenant's testimony that she sent a message to the landlord, but I make no finding as to whether or not it was received. The faucet's pull-out mechanism may have cracked during the tenancy, but the mere fact of breakage does not amount to proof that the tenants' negligence was the cause of the crack. I find that the landlord has not satisfied the burden of proving that the tenants are liable for the cost of replacing the faucet. This claim is dismissed without leave to reapply.

The landlord made several miscellaneous claims. I find that the landlord is entitled to recover the cost of three lightbulbs in the amount of \$11.97. I do not allow the claim for the landlord's time spent purchasing items or for mileage expenses. These are part of her administrative costs of acting as a professional landlord. The landlord claimed for the cost of range hood filters. I accept the tenant's testimony that filters were not present when the tenancy began and this claim is denied.

The landlord claimed for the cost of replacing curtain panels. In a July 2<sup>nd</sup> e-mail to the tenant she said that the tenants were responsible for two stained curtain panels. The landlord said in her later written submission that the tenants should be responsible for the cost of four panels because three were stained and the panels in the bedroom could not be matched so both had to be replaced. The landlord submitted a receipt for two panels in the amount of \$109.98 and a receipt for two more panels in the amount of \$79.96. The tenant argued that the landlord did not attempt to clean the curtains and

therefore did not act reasonably to mitigate her damages. The landlord submitted photographs that showed marks or staining on two curtain panels. I am unable to conclude from the pictures that they were capable of being washed as submitted by the tenant. I accept the landlord's evidence that three curtains were marked or stained and a fourth had to be replaced to match. I allow the claim for curtain replacement in the amount of \$189.94, being the price of new curtains, but I do not allow any additional charges for time, labour or mileage.

The landlord claimed for the cost to replace a cabinet hinge. I accept the tenant's evidence that replacement was unnecessary, but I allow the landlord's claim in the amount of \$20.00 for labour to repair the loose hinge.

I do not allow the landlord claims for re-painting the under sink cabinet; I find that this work was required because of the chronically leaking faucet and I have determined that this was not the fault of the tenants.

The landlord claimed \$100.00 for a broken light fixture. The landlord did not submit documentary or photographic evidence to support this claim and there is no receipt for a replacement fixture. This claim is dismissed without leave to reapply.

The landlord claimed the sum of \$545.00 for the cost of a bathtub repair. The evidence, including the condition inspection report established that the bathtub was chipped in several places when the tenancy began. The tenant submitted a photograph of the damage to the tub. The picture showed that the ceramic coating on the bottom of the tub was chipped and rust marks were visible on the exposed metal. The principal area of wear had grown larger by the end of the tenancy, as shown in the landlord's photograph. The ceramic coating on the tub was damaged at the start of the tenancy and it was not repaired. I find that the growth of the damaged area during the course of the tenancy was inevitable and that the damage to the bathtub constitutes normal wear and tear for which the tenants are not responsible. I dismiss the landlord's claim for the cost to re-glaze the bathtub.

I find that the landlords' claim for additional garbage costs has not been proved to be the tenants' responsibility and this claim is denied.

### Conclusion

I have allowed the landlord's claim for a monetary award in the total amount of \$221.91; this includes the cost for lightbulbs, for new curtains and for labour to repair a hinge. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$271.91.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been allowed in part, in an amount less than the deposits held by the landlord and the remainder of the claims have been dismissed without leave to reapply it is appropriate that I order the return of balance of the tenants' security deposit and pet damage deposit. The tenants paid deposits of \$1,400.00; the balance to be returned to them is the sum of \$1,128.09 and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 24, 2015

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Residential Tenancy Branch

