



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNSD

For the landlord – MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security and pet deposits. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security and pet deposits?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security or pet deposits?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this month to month tenancy started on February 10, 2013. The tenancy ended on May 31, 2015. Rent for this unit was \$2,300.00 per month due on the first of each month. The tenant paid a security deposit of \$1,150.00 on February 10, 2013 and a pet deposit of \$1,150.00 on March 22, 2013.

### **The tenant's application**

The tenant testified that he gave the landlord his forwarding address by text message and the landlord knew where the tenant had moved to as it was just down the road. The tenant also testified that his address was on the tenant's application which was sent to the landlord on July 02, 2015 by registered mail.

The landlord testified that he has never received a forwarding address from the tenant and was not aware of the tenant's address until the landlord received the tenant's application for Dispute Resolution. After receiving this, the landlord then filed his application using the address provided for the tenant on his application.

### **The landlord's application**

The landlord testified that the tenant attended a move in condition inspection of the unit at the start of the tenancy and was provided with a copy of the inspection report. At the end of the tenancy the tenant and landlord arranged to meet at the rental unit at noon on June 01, 2015 do the move out inspection as the new tenants were moving in at 1.00 p.m. Prior to noon the tenant had called the landlord and made threats towards the

landlord if the landlord did not have the security and pet deposit to give to the tenant at the move out inspection.

The landlord testified that the new tenants offered to attend the unit with the landlord at noon to act as a witness due to the threats made by the tenant. The tenant did not attend the move out inspection at noon and when the landlord arrived the doors were unlocked. They waited for the tenant to arrive and then started the move out inspection in the tenant's absence. The tenant's wife did show up later and started to curse and swear at the landlord. The landlord then called the police and the police said the landlord could ask her to leave the premises. The inspection was completed and a new move in inspection was also completed with the new tenants. The landlord referred to these reports and testified that the new tenants move in report, signed by them, shows the condition of the unit is the same when they took possession at 1.00 p.m. as it was when this tenant vacated.

The landlord testified that he had estimated that the damage to the unit would cost around \$1,500.00 so he did return \$1,000.00 of the tenant's deposit on July 14, 2015; as he did not have a confirmed address for the tenant it was sent by e-transfer.

The landlord testified that he found the following damage to the rental unit:

- The ceiling fan was not working. The tenant had called the landlord and said he had knocked the ceiling fan when he was moving out. It could not be repaired and was replaced with a cheaper model. The landlord seeks to recover \$79.50.
- No keys were returned so the landlord replaced the locks and seeks to recover the cost of \$23.51 for a new lock.
- Two bedroom doors had to be replaced as the side of the door where the catch is had been pushed in. These could not be repaired and had to be replaced. The landlord is unsure of the age of the doors as he purchased the property just before the tenant moved in. the landlord seeks to recover the cost for two doors of \$179.20.

- Three window screens and one door screen had to be replaced as they were either missing or torn. The landlord seeks to recover the cost for the screens of \$163.30.
- One window was left cracked in the spare bedroom. This was replaced at a cost of \$75.31.
- The wheels on the dishwasher rack were broken at the front. The landlord could not just replace the wheels and had to purchase a new rack at a cost of \$171.76.
- The towel rail and toilet roll holder in the master bathroom were torn out of the wall. The landlord had to repair the holes and repaint prior to refitting these items. The unit also smelt of Tobago and had marijuana odour. The landlord had to purchase cleaning supplies to get rid of the odour and had to wash the entire unit. The landlord seeks to recover the cost for paint and supplies and cleaning supplies to an amount of \$114.03. The landlord agreed that including on this receipt was a pack of gum for \$0.98 so this can be deducted from the cost claimed.
- The landlord had to purchase an odour eliminator as the odour still lingered in the unit. The landlord seeks to recover \$6.97.
- The tenant did clean some carpets in the unit but the stair carpets and hallway carpets were not clean. The landlord hired a carpet cleaning machine and did the work. Shampoo, odour remover and other cleaning products also had to be purchased. The landlord seeks to recover \$108.04 for this work
- Further carpet deodorizer had to be purchased as the new tenants could still smell Tobago and marijuana in the unit. The landlord seeks to recover a further \$19.79.
- The unit was not left reasonable clean at the end of the tenancy. The landlord paid the new tenants \$200.00 to clean the unit. They spent 20 hours and charged \$20.00 an hour for their labour.
- The new tenants also completed some of the repairs in the unit and as the tenants had not cut the front or rear grass the new tenants also did this yard

work. The landlord paid the new tenants \$250.00 for the repair work and yard work.

The landlord has provided receipts and invoices, including time sheets for the work done by the new tenants in documentary evidence.

The landlord testified that he had to do a lot of running around picking up and ordering items for the damage in the house. The landlord drives a truck and incurred additional costs for gas to do this running around. The landlord seeks to recover \$99.00 and has provided a gas receipt in documentary evidence.

The landlord testified that when the tenants were living in the unit they informed the landlord that the washing machine would not drain. The landlord hired a technician to come and clean out the trap. The technician found a small sock clogging the trap. This was removed and the technician told the landlord how to unblock the trap if it happened again. The landlord testified that this occurred twice more and the landlord informed the tenant how to unblock the trap. The tenant did not do this himself and called the technician out again. The technician found a lot of shredded paper in the trap which is located inside the washer. The tenants paid the technician but deducted \$100.00 from their rent. The next time this happened the tenants again refused to unblock the trap themselves and called the technician out again. This time the tenants deducted \$140.00 from their rent. The landlord testified that the actual cost was only \$120.00 and the tenants should be responsible to pay these costs as they could have easily unblocked the trap themselves. Furthermore the tenants would not provide a receipt to the landlord showing they had made these payments. The landlord seeks to recover the costs deducted from rent of \$240.00.

The landlord seeks an Order to be permitted to keep the balance of the security and pet deposits of \$1,300.00 as the costs for repair came in higher than the landlord had estimated.

The tenant agreed that he had damaged the fan when he moved out of the unit and the screen on the front door had also been damaged during his tenancy. The tenant testified that he has no problem paying for these two items only. The tenant disputed the remainder of the landlord's claim. The tenant testified that it was the landlord who was late coming to the move out inspection and the tenant waited for about 20 minutes and then left. The tenant's wife went back later but the landlord was doing the inspection. The tenant agreed his wife may have got angry at the landlord.

The tenant testified that the doors were already broken when he moved into the unit but this was not documented on the move in inspection report. The window screens were old and some were either missing or torn when they moved in.

The landlord testified that the screens were approximately two years old. A few of the windows and screens were new when the landlord purchased the house three months before the tenant moved in.

The tenant testified that the unit had a good dishwasher at the start of the tenancy and this was replaced with a cheaper model by the landlord. When the tenant pulled the rack out the wheels came off and these were left on the windowsill. The landlord could have replaced the wheels and did not have to purchase a new rack.

The tenant disputed that the towel rail or toilet roll holder were torn from the wall and testified that these were in place at the end of the tenancy. The tenant testified that when they moved into the unit the walls were not clean and had black marks and the carpets were dirty. The tenant testified that he steam cleaned all the carpets including the hallway and stairs. The tenant testified that he put the keys in the mailbox but could not inform the landlord of this as the landlord would no longer take the tenants calls.

The tenant disputed that nether he or his wife ever smoked cigarettes or marijuana inside the unit but rather he went out on the deck to smoke. The tenant testified that he would not smoke inside as they had a child. The landlord and his wife were living in the

basement of the house at the time and they both smoked cigarettes and marijuana inside their unit.

The landlord testified that the carpets were cleaned professionally at the start of the tenancy and there was only three small burn marks indicated on the move in inspection report. The walls were not dirty and the keys were not in the mailbox. The landlord denied that he or his wife smoked marijuana inside the unit. The move in report shows the unit was clean and the tenant signed to agree to the condition of the unit at the start of the tenancy.

The tenant testified that they cleaned the unit thoroughly when they left and did over 20 hours of yard work when he moved in. The yard was maintained by the tenant as he is a landscaper. The grass was also cut at the front and the back three days before moving out of the unit.

The tenant disputed the landlord's claims for labour costs and gas.

The tenant testified that the washing machine had been put into the unit and then a wall was built around it. This made it difficult to get to the back of the machine and the technician who initially came the first time had to take part of the flooring out to get the washing machine out to access the trap. The tenant was not prepared to do this each time the trap became blocked and so called the technician out.

The tenant testified that the landlord had said he would return the security and pet deposit when his new tenants moved in and paid theirs. The landlord went back on this and refused to return the deposits. The tenant agreed the landlord did return \$1,000.00.

The landlord asked the tenant why he did not just clean out the lint trap accessed inside the machine. The tenant responded that it was not just the lint trap the first time. The second time the tenant was away and the landlord asked his wife to do it and the third time the tenant did the work himself. The landlord asked the tenant if he did it himself

why he deducted money from the rent. The tenant responded that the technician would not come back out unless the tenants paid him as the landlord's cheque had bounced after the first visit.

The landlord asked the tenant when he agreed to pay the tenant the security and pet deposits. The tenant responded on the Friday before and the landlord told the tenant and his wife. The landlord asked the tenant if he smoked outside why was there a full ashtray inside. The tenant responded that the ashtray was brought inside to prevent the ash blowing everywhere. The tenant testified that the smell from marijuana does not linger inside a house.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's application to recover the security and pet deposits; under s. 38 of the *Act* the tenant is required to provide the landlord with a forwarding address in writing. The tenant testified that he did this by text message. The landlord disputed that he received the tenant's forwarding address. Text messaging is not considered to be the correct way to provide a forwarding address in writing and without further proof from the tenant that he has provided a forwarding address to the landlord I must find that the tenant's application is premature and is therefore dismissed. The address on the tenant's application is not considered to be a forwarding address. The matter of the security and pet deposits will be considered under the landlord's application.

With regard to the landlord's application for a Monetary Order for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;



- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has provided receipts and invoices showing the areas of damage claimed. The landlord has also provided a copy of the inspection reports. The landlord testified that they had agreed to meet at noon to do the inspection and the tenant did not appear. The tenant testified that he was there at noon and left after the landlord did not appear. In this matter it is one person's word against that of the other and therefore impossible for a third party to decide what the truth is. However, the tenant did testify that he did not wait long for the landlord and the landlord testified he conducted the inspection in the tenant's absence. While in normal circumstances I might then consider that the move out report has some minor value, in this case as the new tenants were moving in at 1.00 p.m. on the same day, I can see from their move in report which they have signed to indicate that their report fairly represents the condition of the unit when they took possession carries a lot more weight.

Had the tenant been at the unit at noon the tenant should have waited for the landlord as the impotence of the move out inspection is paramount to any future claim made by the landlord.

With this in mind I find the landlord has sufficient evidence to show the tenant agreed with the damage to the ceiling fan and the landlord is entitled to recover the costs to replace this of **\$79.50**.

I find the landlord has sufficient evidence to show that the keys were not returned by the tenant at the end of the tenancy and therefore as new tenants were taking immediate possession the landlord had to change the locks. The landlord is therefore entitled to recover **\$23.51** for the new lock.

I have considered the move in inspection report and there is no indication on that report that the doors were damaged at the start of the tenancy. I therefore find in favor of the landlord's claim to replace the door; however, the landlord was unsure of the age of the doors and therefore I must deduct some costs for depreciation for an unknown age. The life of doors is shown on under the Residential Tenancy Policy Guidelines # 40 of being 20 years as it is unknown how old the doors are I have deducted a nominal amount for depreciation of 40 percent. Consequently, I have limited the landlord's claim to **\$107.52**.

I have again considered the move in inspection report with regard to the window screens. There is no indication that any of the window screens are missing or damaged at the start of the tenancy; I there find that this damage was caused during the tenancy. The landlord was unable to provide conclusive evidence as to the age of the window screens; I therefore make a nominal deduction for depreciation of 10 percent. The tenant has agreed the door screen was damaged during the tenancy. Consequently, the landlord is awarded the amount of **\$146.97**.

With regard to the cracked window, this is also documented on the move out report but not on the move in report. I must therefore find in favor of the landlord's claim to recover costs to replace the glass of **\$75.31**.

With regard to the replacement dishwasher rack; I am not satisfied that the landlord had to replace the entire rack due to two missing wheels. The landlord must attempt to

mitigate the loss in accordance with s. 7(2) of the *Act* and in this matter the landlord has not shown that he could not either replace the wheels by reattaching the wheels or purchasing two new wheels. It is my decision that the landlord has not mitigated the loss in this matter and this section of his claim is dismissed.

With regard to the paint, supplies and cleaning supplies purchased for \$113.05. The move out report indicates that there were areas of the unit that required cleaning, and that the towel rail and toilet paper holder were damaged. The move out report also indicates that the walls in some rooms were unwashed and one had wax on it. There is however, no mention of an odour in the unit and I am not satisfied that the landlord and or his wife did not also smoke inside while living in the basement unit. In this matter the landlord must show on a balance of probabilities that the tenant is solely responsible for any damage or odour. I am satisfied that the towel rail and toilet roll holder were damaged, there were at least two walls left dirty in the living room and many other areas of the unit required cleaning; I am not satisfied that the unit required deodorizing solely because of the tenant's actions alone in smoking inside the unit. Consequently, I have limited the landlord's claim for paint, supplies and cleaning supplies to **\$90.00**. And I dismiss the landlord's claim for a further amount of \$6.97 for odour eliminator.

With regard to the landlord's claim for carpet cleaning; the tenant testified that he did clean all the carpets. The landlord testified that the tenant did clean the carpets with the exception of the stairs and hallway. I have considered the landlord's move out report and this does not clearly indicate the condition of the stairs and hallway. On the copy provided in evidence this portion cannot be read. On the new tenants move in report it does not indicate that the stairs and hallway carpets are dirty. The tenants move out report indicates that the living room floor/ carpet is stained and dirty and the entrance carpet is dirty; yet at the hearing the landlord agreed the tenant had cleaned those areas. Without conclusive evidence that the stairs and hallway carpet is dirty I find I prefer the tenant's evidence in this matter and therefore dismiss the landlord's claim for carpet cleaning of \$108.04. I also therefore dismiss the landlord's claim for carpet deodorizer of \$19.79.

With regard to the landlord's claim for labour costs for cleaning paid to the new tenants. I have considered the move out inspection report and find that there are many areas of the unit indicated on that report as being dirty in all rooms. I am therefore satisfied that in getting the new tenants to clean the unit rather than use a cleaning company that the landlord has mitigated his loss in this matter and his claim for **\$200.00** paid to the new tenants is upheld.

With regard to the landlord's claim for \$250.00 paid to the new tenants to make the repairs and cut the grass, I am satisfied from the evidence before me that there were some repairs required to the unit and some additional repairs above and beyond the repairs the landlord has claimed in this application. I am satisfied the landlord has met the burden of proof that the damage was caused during the tenancy. I am also satisfied that the tenant did not cut the lawns at the property at the end of the tenancy and this work was also completed by the new tenants. Consequently, I find the landlord has mitigated the loss in this matter by using the labour from his new tenants rather than engaging a contractor to do this work. The landlords claim for **\$250.00** is therefore upheld.

With regard to the landlord's claim for \$99.00 for gas to collect supplies and items required for repair. The landlord has provided a receipt in documentary evidence; however, there is no other evidence to help me determine how many miles the landlord traveled to collect the supplies or how many miles his truck does on a tank of gas. I am satisfied the landlord did have to collect various things to remedy the repairs and cleaning required in the unit, but without further corroborating evidence that the entire cost of \$99.00 was used for this work I must limit the landlord's claim to **\$50.00**.

With regard to the landlord's claim to recover rent of \$240.00 deducted by the tenants for repairs to the washer; I am satisfied from the evidence before me that the tenants could have carried out this work when the washer became blocked. The tenants are required to regularly clean out filters in a washer to prevent build up or blockages. The tenants should not have to call out a technician to do this work for them. The tenants

also testified that on one occasion he did unblock the trap himself and therefore he would not be entitled to charge the landlord for this work. A tenant is not entitled to deduct any rent unless it is for an emergency repair that falls under s. 33 of the *Act* or unless they have either the landlord's written permission or an Order from the Residential Tenancy Branch to do so. I therefore uphold the landlord's claim to recover the rent reduction made by the tenant of **\$240.00**.

As the landlord's claim is partially successful I find the landlord is also entitled to recover the filing fee of **\$50.00**.

I Order the landlord to retain the balance held in trust of the security and pet deposit of **\$1,300.00** pursuant to s. 38(4)(b) of the *Act*. The landlord will receive a Monetary Order for the balance of his claim pursuant to s. 67 and 72(1) of the *Act* as follows:

Ceiling fan	\$79.50
Lock	\$23.51
Two replacement doors	\$107.52
Replacement screens	\$146.97
Cracked window	\$75.31
Paint and cleaning supplies	\$90.00
Labour costs	\$450.00
Costs for gas	\$50.00
Withheld rent for washer repair	\$240.00
<b>Subtotal</b>	<b>\$1,262.81</b>
Plus filing fee	\$50.00
Less balance of security and pet deposits	(-\$1,300.00)
<b>Total amount due to the landlord</b>	<b>\$12.81</b>

Conclusion

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

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlord to keep the security and pet deposits of **\$1,300.00**. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$12.81**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 08, 2015

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Residential Tenancy Branch

