



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: MNSD, MNDC, FF  
For the landlord: MNSD, MND, MNR, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act").

The tenant applied for a return of his security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for alleged damage to the rental unit and for alleged unpaid rent, and for recovery of the filing fee paid for this application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Preliminary and Procedural Matters**

At the outset of the hearing, the landlord denied receiving the tenant's application; however, the tenant was advised that his application for monetary compensation was being refused, pursuant to section 59(5)(c) of the Act because his application for dispute resolution did not provide sufficient particulars of his monetary claim, as is required by section 59(2)(b) of the Act.

I find that proceeding with the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of particulars that set out how the tenant

arrived at the amount of \$11,340.00 makes it difficult, if not impossible, for the landlord to adequately prepare a response to the tenant's claim.

The tenant is at liberty to re-apply for his monetary claims as a result, but is reminded to include full particulars of the claim when submitting his application, and is encouraged to use the "Monetary Worksheet" form located on the Residential Tenancy Branch website, [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca). The tenant may include any additional pages to set out the details of the dispute in her application, as required.

The hearing proceeded on the landlord's application only.

#### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

#### Background and Evidence

The evidence indicated that the tenant first moved into the rental unit on May 1, 2013, that the initial monthly rent was \$2100.00, and that the tenant paid a security deposit of \$1050.00. The evidence further indicated that a new tenancy agreement for a tenancy was arranged between the parties, beginning July 1, 2014, for a monthly rent of \$2400.00.

The tenancy ended on May 15, 2015.

The landlord's monetary claim is as follows:

Tempy. countertop repair	\$112.00
Broken bedroom cupboard	\$78.40
2 metallic blinds	\$168.00
Repair of blinds, labour	\$663.40
Stove exhaust cups	\$42.80
Blind sticks	\$89.60
Paint 2 rooms and stair case	\$802.50
Permanent counter top (est)	\$1414.80
Water and garbage	\$475.33
Remaining cash with tenant	\$295.00

The landlord confirmed that he lives out of the country, and that although he was not present for either the move-in or move-out inspection, each inspection was attended by a different landlord's agent. Neither agent was present for the hearing.

In support of his application, the landlord submitted that the tenant's actions caused damage to the rental unit during the tenancy, for which the tenant should be

responsible. In particular, the landlord submitted that the tenant damaged the kitchen counter top, which required a temporary repair, but will ultimately require a replacement at some point in the future.

The landlord submitted further that the tenant damage the blinds in the rental unit, which required either a replacement or repair. The landlord submitted further that the rental unit required re-painting and that the tenant owed for municipal water and garbage, as required by the latest written tenancy agreement submitted into evidence by the landlord. There was also included a handwritten addendum reflecting that the tenant was to pay 2/3 of the utilities.

The landlord confirmed that all building elements were from 2008.

The landlord's additional relevant evidence included, but was not limited to, copies of black and white photographs, which were indistinctive, a copy of a utility bill for water and garbage, an estimate for countertop replacement, statements or receipts from an individual for various repairs to the tenant's rental unit, and parts of a move-in and move-out inspection report. In explanation, the landlord provided various pages of the condition inspection report sent to him via email by his two agents.

#### *Tenant's response-*

The tenant submitted that during the move-out inspection, the landlord phoned his agent, who in turned informed the landlord that the rental unit was in good condition. The tenant submitted further that he asked the landlord's agent to sign the condition inspection report, but that the agent refused to do so. The tenant stated that the home was only in fair condition when the tenancy began, and that he was forced to agree to pay for the water and garbage on the second tenancy agreement as he believed the landlord would have evicted him otherwise.

The tenant submitted further that he agreed to the costs of changing 2 blinds, but that he should not be responsible for maintaining the 31 blinds in the rental unit. The tenant denied the other damage as claimed by the landlord.

#### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under sections 23(3) and 35(3) of the *Act*, a landlord or agent must complete a condition inspection report in accordance with the regulations. Among other things, section 20 of the Residential Tenancy Regulation requires that the condition inspection report contain:

- *the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;*
- *the address of the rental unit being inspected;*
- *the date on which the tenant is entitled to possession of the rental unit;*
- *the address for service of the landlord;*
- *the date of the condition inspection;*
- *a statement of the state of repair and general condition of each room in the rental unit.*

Additionally, the inspection report must contain other required information, such as

- *a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;*
- *any other items which the landlord and tenant agree should be included;*
- *a statement identifying any damage or items in need of maintenance or repair;*
- *appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*
- *the following statement, to be completed by the tenant:*
- *I, .....  
Tenant's name*

*[ ] agree that this report fairly represents the condition of the rental unit.*

*[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*

.....  
.....  
.....

In reviewing the evidence of the landlord, I found I could not rely upon the emailed, pieced-together condition inspection reports supplied by the landlord. The landlord had 2 different agents acting on his behalf for each inspection, and neither agent nor the tenant signed the condition inspection report as required. Further, neither agent was present at the hearing to authenticate the contents of the report, and when faced with the tenant's first-hand testimony, I found I could not rely on the landlord's hearsay testimony as he was not present for the inspections.

Further there was a written notation in the "repairs to be completed at state of tenancy" section showing that one blind was broken and that the house and carpets needed cleaning.

Overall, I found the inspection reports to be deficient for purposes of the landlord's compliance with his requirements under the Act for a condition inspection report in order to establish the condition of the rental unit and I therefore could not rely on the inspection report to establish that the tenant had committed the alleged damage to the rental unit, as claimed by the landlord.

As the tenant agreed, however, to damaging 2 blinds, I grant the landlord a nominal amount for repair or replacement, in the amount of \$50.00, in recognition that the tenant acknowledged damage. I have determined this amount due to the insufficient breakdown in his receipt evidence for the 2 specific blinds.

As to the landlord's claim for water and garbage, I have reviewed the latest written tenancy agreement, which appeared to be the original written tenancy agreement, altered with handwritten terms to reflect additional terms agreed upon by the parties. In particular, water appeared to be included with the monthly rent in the original tenancy agreement, but appeared not to be in the altered tenancy agreement. This part of the tenancy agreement was not clear, as the box next to "water" was marked, but a handwritten notation stated water was not included.

Additionally, the latest written tenancy agreement was not signed by the parties at that time, nor were the altered terms initialed by the parties.

In considering the evidence of the parties, I find that the tenant was aware that he agreed to provide for 2/3 of the water usage as reflected in the latest tenancy agreement and in the addendum, and I therefore find that the landlord is entitled a monetary award of \$304.67, or 2/3 of \$457.00 as reflected in the utility bill. I note that I have not granted an award to the landlord for garbage costs, as that cost was included in the monthly rent on the original and latest written tenancy agreement.

In consideration of a small partial success with his application, I grant the landlord a partial recovery of his filing fee, or \$20.00.

Due to the above, I grant the landlord a total monetary award of \$374.67, comprised of blind repair of \$50.00, water usage of \$304.67, and a partial filing fee of \$20.00

I direct the landlord to retain the amount of his monetary award of \$374.67 from the tenant's security deposit of \$1050.00 and order him to return the balance of the security deposit, or \$675.33, to the tenant, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of the balance of his security deposit of \$675.33, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application is partially successful, as he has been granted a monetary award of \$374.67. The landlord is ordered to retain this amount from the tenant's security deposit of \$1050.00, and return the balance of \$675.33 immediately.

The tenant is granted a monetary order in the amount of the balance of his security deposit of \$675.33 in the event the landlord does not comply with this order.

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 7, 2015

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Residential Tenancy Branch

