



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MND, MNDC, MNR, MNSD, FF, O

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent or utilities, 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and confirmed receipt of the notice of hearing package(s) filed by the other party. Both parties also confirmed receipt of all of the submitted documentary evidence provided by the other party. As both parties have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence package(s), I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

The hearing commenced as scheduled but was unable to be completed. As both parties have filed extensive supporting documentation, an adjournment is required for more time to complete the hearing. The continuation date of this hearing will be mailed along with this Interim Decision.

The hearing was adjourned. Both parties were cautioned that no further evidence would be accepted and that neither party may submit any further evidence.

On May 10, 2016 the conference call hearing was reconvened with both parties in attendance. Due to extensive arguments raised over multiple issues, the hearing was adjourned a second time as more time was required to complete the hearing.

On June 15, 2016 the conference call hearing was reconvened with both parties in attendance.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities, for damage to the rental unit, site or property, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

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

This tenancy began on February 1, 2014 on a fixed term tenancy ending on January 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated January 31, 2014. The monthly rent was \$1,475.00 payable on the 5<sup>th</sup> day of each month. A security deposit of \$1,000.00 was paid. A condition inspection report for the move-in was completed by both parties on January 29, 2011. An incomplete condition inspection report was made by the landlord on October 5, 2015.

The landlord seeks an amended monetary claim of \$6,564.60 which consists of:

Paint	\$52.27
Paint	\$104.23
Paint/Supplies	\$30.23
Paint	\$62.24
Old Carpet Disposal	\$25.00
New Carpet Material	\$1,902.70
New Carpet Installation	\$605.43

New Blinds(livingroom/bedroom)	\$1,097.60
Painting/Repair labour	\$1,200.00
Recovery of Filing Fee	\$100.00
September 2015 Unpaid Rent	\$837.50
October 2015 Lost Rental Income (5 days at \$52.25 day for Oct 1-5)	\$261.20
October 2015 Late rent penalty	\$25.00
Loss of rent for Repairs	\$261.20

The landlord relies upon the submitted copies of:

HomeDepot Receipt for Paint	\$52.27
HomeDepot Receipt for Paint	\$104.23
HomeDepot Receipt for Paint	\$30.23
HomeDepot Receipt for Paint	\$62.24
MetroVancouver Dump Receipt	\$25.00
End of the Roll Invoice Carpet	\$1,902.70
WindFlooring Invoice Installation	\$605.43
Venetian Blind Service Centre	\$1,097.60

The landlord stated that the tenants left the rental premises damaged and dirty requiring repairs and cleaning to make the rental unit re-rentable. The landlord refers to the submitted copy of the condition inspection report for the move-in dated January 29, 2011 completed by both parties which show the condition of the premises at the beginning of the tenancy. The landlord also relies upon the incomplete condition inspection report dated October 5, 2015 which was completed by the landlord without the tenant for comparison. The landlord also relies upon the 12 submitted photographs of the rental unit showing the condition of the rental property at the end of the tenancy. The landlord provided affirmed testimony that the tenant failed to pay all of the rent owed for September 2015.

The tenants dispute the landlord's claims stating that the tenants provided more than 1/3 of the labour to repair the rental property. The tenants confirmed that the "carpets were not left in pristine condition" and that there was mold on carpet. The tenants admitted that some of the damage to the blinds that were caused by their dog. The tenants have referred to 8 pages of photographs submitted showing the condition of the rental property during the repairs. The tenants confirmed that only 1/2 of the September 2015 rent was paid.

During the hearing the tenants withdrew the following portions of their monetary claim:

Copies of Photos	\$24.46
Registered Letter Fee	\$10.00

Security Deposit for New Tenancy                      \$875.00

The tenants amended monetary claim of \$7,925.00 consists of:

Return of Double the Security Deposit	\$2,000.00
Compensation for Hardship (3X\$1,675.00)	\$5,025.00
Painting Labour	\$800.00
Recovery of Filing Fee	\$100.00

The tenants seek the return of double the \$1,000.00 security deposit as the tenancy ended on October 5, 2015 and did not file for dispute resolution to dispute its return until December 1, 2015.

The tenants seek compensation of \$5,025.00 for hardship equal to 3 months of rent (\$1,675.00 X 3) for each of the 3 years of tenancy. The tenants stated that there were ongoing issues of mold which were reported to the landlord which were never resolved. The tenants stated that they had to repeatedly clean the mold themselves. The landlord disputes these claims stating that the tenants were informed that the humidity levels were too high and after having inspected the rental unit, discovered that the tenants had turned off the humidity fan. The landlord stated that after that initial issue was brought up at the beginning of the tenancy, no other issues were reported to the landlord. The tenant disputed this stating that repeated verbal conversations took place notifying the landlord of the ongoing mold issue went unresolved.

The tenants also seek \$800.00 as compensation as the landlord had offered \$800.00 in payment to assist in the labour for painting. The landlord disputes this stating that there was no agreement for labour, but that there was an ongoing conversation with the tenant for labour.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Landlord's Monetary Claim:

On the landlord's monetary claim I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has provided a copy of the completed condition inspection report for the move-in, a copy of an incomplete condition inspection report for the move-out with the submitted photographs showing the condition of the rental unit at the end of the tenancy. The tenants did not dispute the condition of the rental unit at the end of the tenancy and rely heavily on direct testimony arguing that a labour agreement was made with the landlord to repair damage. The landlord has also submitted detailed invoices and receipts for the claims. On this basis, I find that the landlord has established a claim for damages/compensation/unpaid rent and the loss of rental income for the October 1-10. However, I find that the landlord is not entitled to the \$25.00 in compensation for the late payment of October Rent as the landlord cannot be said to have an expectation of a rent payment from the tenant after the end of tenancy. The landlord has established a total monetary claim for \$6,539.60.

#### Tenants' Monetary Claim:

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

On the tenants' monetary claim, I find based upon the undisputed affirmed testimony of both parties that the landlord did not repay the \$1,000.00 security deposit within 15 days of receiving the tenants forwarding address in writing on November 10, 2015. The landlord had applied for dispute of the return of the security deposit on December 1, 2015, which is clearly beyond the 15 day time period. On this basis, I find that the tenant is entitled to return of the original \$1,000.00 security deposit.

The landlord having failed to comply with section 38 (1) of the Act is required to pay a monetary award pursuant to section 38 (6) equivalent to the \$1,000.00 security deposit. The tenants are entitled to \$1,000.00 as compensation.

I find on a balance of probabilities that the tenants claim for compensation for hardship of \$5,025.00 and \$800.00 of labour for painting have failed. The tenants claim for compensation for hardship as a result of mold in the tenancy has not been proven. The landlord has disputed the claims of the tenants and the tenants rely only on direct testimony. The tenants have failed to provide sufficient evidence to satisfy me that an ongoing issue during the tenancy was present or that the landlord was notified to properly address that issue during the tenancy. On the tenants claim for labour costs, the tenants provided direct testimony that an agreement for labour to fix the damages in the rental

property were made, but that this was disputed by the landlord. The landlord also provided direct testimony disputing that no such agreement was made. On this basis, the tenants' claim is dismissed.

As both parties have been successful in their applications, I decline to make any orders regarding recovery of their filing fees. Both parties shall bear the burden of their filing fees.

The landlord has established a total monetary claim of \$6,539.60.

The tenant has established a total monetary claim of \$2,000.00.

Using the offsetting provisions of section 72 of the Act, I find that the landlord is granted a monetary order for the difference of \$4,539.60.

### Conclusion

The landlord is granted a monetary order for \$6,539.60.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 16, 2016

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Residential Tenancy Branch