



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and the tenant confirmed they received the Application for Dispute Resolution by registered mail. I find that the tenant is served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for utilities and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant owes for utilities and damaged the property, that it was beyond reasonable wear and tear the cost of repair?  
Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in August 2009, that monthly rent was \$1395 and a security deposit of \$697.50 was paid. The tenant vacated on February 29, 2016 and a move out inspection was done.

The landlord claims as follows:

1. \$58.34 for hydro. The tenant said it was paid and the landlord confirmed during a break in the hearing that it was paid. This claim is withdrawn.
2. \$142.50 for blind cleaning. The tenant disputes this as she said they never used the blinds/curtains and she washed and rehung them at the end of the tenancy. The landlord said they were extremely wrinkled so they had to send them to be dry-cleaned. The tenant said she would have been willing to iron them right then but the landlord refused. She said the tenancy did not end until February 30, 2016. The landlord said they had tenants moving in immediately and needed to get the suite ready.
3. \$131.25 for carpet cleaning. The tenant said she recognized this was mandatory.

4. \$309.63 to replace a kitchen counter that was new in 2006 and had burn marks on it. The landlord said they had used the Residential Tenancy Policy Guideline to account for reasonable wear and tear and discounted the cost accordingly.
5. \$90 to repair two holes in the drywall. The tenant said she offered to fix them and had until February 30, 2016.

The landlord supplied copies of the move in and move-out reports, invoices, photographs, a rent ledger, the tenancy agreement and the tenant's notice to vacate on February 29, 2016. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

I find the tenants owe no rent or utilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### **Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that it was necessary to dry clean the drapes. Section 37 of the Act provides a tenant must leave the unit clean and undamaged and vacate by 1 p.m. on the date of the end of the tenancy. Although the tenant said she would have ironed them, I find she did not do this by 1 p.m. on the last day of the tenancy, February 29, 2016, and violated the Act. They were very wrinkled, especially if they had been folded and put away for about 10 years. I find it was necessary for the landlord to prepare the unit for the next tenant. I find the landlord entitled to recover \$142.50 for blind cleaning.

I find the landlord entitled to recover \$131.25 for carpet cleaning as the tenant agreed it was mandatory to have the carpets professionally cleaned. In respect to the claim for the kitchen counter replacement, I find the weight of the evidence is that the tenants damaged the kitchen counter. I find the invoice for replacing them was \$519.25. Residential Policy Guideline #40 assigns a useful life for kitchen counters of 25 years. As these counters were new in 2006, they had a useful life remaining of 15 years. I find the landlord entitled to recover \$309.63 as calculated for the remainder of useful life.

I find the tenants damaged the drywall as evidenced in the photographs and move-out report. I find the landlord entitled to recover \$90 to repair the two holes in the drywall. The tenant said she offered to fix them and had until February 30, 2016. I find she was mistaken in the date as stated previously. As she had not done the repair by 1 p.m. on February 29, 2016, I find the landlord entitled to repair and recover the cost. I find the landlord's claim well supported by the invoices, photographs and reports in evidence.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Blind cleaning	142.80
Carpet cleaning	131.25
Replacement counter top adjusted cost	309.63
Drywall repair	90.00
Filing fee	100.00
Less security deposit	-697.50
<b>Total Monetary Order to Landlord</b>	<b>76.18</b>

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: July 06, 2016

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Residential Tenancy Branch