



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord: MNSD, MND, FF  
Tenant: MNSD, O(MNDC), FF

### **Introduction**

This hearing is in response to cross applications by the parties for Monetary Orders.

The hearing was reconvened from May 30, 2016 to allow the receipt of evidence by the Branch as previously received by the parties.

The landlord filed on November 06, 2015 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72

The tenant filed on January 20, 2016 for Orders as follows;

1. An Order for return of security deposit - Section 38
2. Money owed for damage or loss under the Act – Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties were represented in the initial teleconference hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties had acknowledged receiving all the evidence of the other. Despite the tenant having also filed their own application for dispute resolution and having been notified during the initial hearing date the matter was adjourned and to be reconvened; and, having been officially notified by the Branch of the reconvened date to be heard at this time, the tenant did not participate in the conference call hearing. As a result, the tenant's application is preliminarily **dismissed**, without leave to reapply. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on May 01, 2013 and ended earlier than the fixed term date on October 30, 2015. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1000.00 - which the landlord still holds in trust. During the tenancy rent in the amount of \$2200.00 was payable in advance on the first day of each month. At the beginning of the tenancy the parties conducted a mutual move-in inspection and at the end of the tenancy the landlord and tenant arranged a move-out inspection date and time. However, the landlord acknowledged they did not attend the agreed date and time for the move-out inspection as the landlord was sufficiently delayed. The tenant left. The parties did not return together to do the inspection. None the less, the landlord took photo images of the condition of the unit at the end of the tenancy and recorded their version of the condition onto the condition inspection report (CIR) but did not sign the report. The landlord, none the less, sent the CIR to the tenant by mail. The landlord testified that the CIR and their photo images accurately reflect the condition of the unit at the end of the tenancy.

The landlord claims the rental unit was in good condition other than for some minor deficiencies as noted in the move-in portion of the CIR. The landlord claims the tenant caused damage to the rental unit during the tenancy, primarily to the walls and the hardwood flooring, some appliance damage and damage to window covering apparatus and general lack of cleanliness of the unit. The landlord's *claims on application* are as follows as provided in their Monetary Order worksheet in support of their application.

Prepare and repaint damaged interior walls of unit	\$2056.00
Refinish damaged hardwood flooring	2016.00
Broken refrigerator shelf	90.00
Broken refrigerator crisper cover AND end cap. Total	112.87
Missing oven rack	61.09
Broken <i>lazy susan</i> shelf	28.00
broken cabinetry - hardware	12.00
Missing Master Bedroom curtain rod	99.39
Broken bsmt patio door curtain rod / blinds replacement	127.67
Broken master bedroom screen door	39.20
Missing vertical mirror from basement room	100.00
Missing pool vacuum	81.76
Missing/broken garage door remote unit	67.19
Removal of tenant refuse / wooden entertainment unit	75.00
Cleaning 5 hrs. x \$20 – landlord's labour	100.00
Yard / lawn - remedy / clean up	400.00
Refrigerator damage (dents, scratches) – loss of value – verbal estimate from selling store that item would be discounted from retail sale price by \$500.00.	300.00
Carpet cleaning - all rooms	351.75

<b>Total monetary claim on application</b>	<b>\$6117.92</b>
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The landlord provided photo images and document and receipt or document estimates evidence in support for the majority of their claims.

### **Analysis**

A copy of the Residential Tenancy Act, Regulations and other publications are available at [\*\*www.gov.bc.ca/landlordtenant\*\*](http://www.gov.bc.ca/landlordtenant).

On preponderance of the evidence submitted and the undisputed testimony of the landlord, I find as follows:

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement with allowance for depreciation or wear and tear. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are indeed the result of damage through the conduct or neglect of the tenant.

I find the landlord's evidence respecting the condition of the walls throughout the unit clearly depicts, both, as excessive wear and tear but primarily damage as attributed by the landlord. I accept the landlord's claim for remedy and repainting of the walls subject to the landlord's testimony the walls were last refinished 7 years earlier, and I adjust this claim. **Residential Tenancy Policy Guidelines 37 – Useful life of work done or thing purchased – Finishes - 4. Painting (ii) Interior** states as a general guide that the useful life of interior paint finishes is 4 years; however, I note that this guideline does not take into account remedial work in preparation for painting. As a result, I find the landlord is not entitled to painting however I grant the landlord a set award of **\$1000.00** for preparation work toward the painting.

I accept the landlord's evidence respecting the damaged hardwood flooring subject to the landlord's testimony the flooring was installed 7 years earlier. Again the same Policy Guideline for hardwood flooring states the useful life of hardwood flooring as 20 years and the landlord has not mitigated this claim. As a result I grant the landlord 65% (13/20) of their claim for replacement flooring in the amount of **\$1310.40**.

I accept the landlord's evidence respecting replacement for the broken refrigerator shelf, crisper cover and end cap in the sum amount of **\$202.87**.

I accept the landlord's evidence respecting replacement for the missing oven rack, and *lazy susan* shelf unit in the sum amount of **\$89.09**.

I find the landlord has not provided sufficient evidence by way of a receipt or an estimate in support of their claim for cabinetry hardware and I **dismiss** this portion of their claim.

I accept the landlord's evidence respecting replacement for the missing master bedroom curtain rod and the broken basement patio door curtain rod. As the landlord did not provide evidence of another curtain rod for the basement patio door, but rather replacement blinds, I grant the landlord *equal amounts* for both missing/broken curtain rods in the sum of **\$198.78**.

I accept the landlord's evidence respecting replacement for the broken master bedroom screen door in the amount of **\$39.20**.

I find the landlord has not provided sufficient evidence by way of a receipt or an estimate in support of their claim for a missing vertical mirror in the basement room and I **dismiss** this portion of their claim.

I accept the landlord's evidence respecting replacement for the missing pool vacuum and missing/broken garage door remote in the sum amount of **\$148.95**.

I find the landlord has not provided sufficient evidence by way of a receipt or an estimate in support of their claim for removal of the tenant's refuse / wooden entertainment unit and I **dismiss** this portion of their claim.

I accept the landlord's evidence respecting cleaning of the unit in their claimed amount of **\$100.00**.

I accept the landlord's evidence respecting remedy to the yard and lawn damage. Moreover, I find the tenancy agreement states the tenant is responsible for *Lawn care*, and, *Tenant(s) to have all carpet cleaned by professionals upon leaving premises*. As a result, I grant the landlord their claim for these items in the sum amount of **\$751.75**.

I accept the landlord's evidence respecting the damage to the refrigerator exterior portions and the associated loss of value of the item. I note that the damage is cosmetic and that the item remains operable. I accept the landlord's valuation evidence based on a verbal estimate, however, in the absence of a documented estimate I grant the landlord a nominal award for the loss in the amount of **150.00**.

**Residential Tenancy Policy Guideline 17. Security Deposits and Set Off**, in relevant parts states as follows.

**C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

*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 dispute resolution for its return.*

and,

**3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit**

- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.*

**Section 36** of the Residential Tenancy Act in respect to **Division 5 - At the End of a Tenancy**, in relevant part states (**emphasis mine**)

**Consequences for tenant and landlord if report requirements not met**

**36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

(b) having complied with section 35(2), does not participate on either occasion

I find the landlord failed to attend the end of tenancy condition inspection arranged with the tenant. As a result of the above **Residential Tenancy Policy Guideline 17. Security Deposits and Set Off**, it is appropriate that I grant the tenant double their security deposit and offset this amount from the landlord's award made herein.

The landlord is further entitled to recover cost for filing this application.

***Calculation for Monetary Order***

Prepare and repaint damaged interior walls of unit	\$1000.00
Refinish damaged hardwood flooring	1310.40
Broken refrigerator shelf	90.00
Broken refrigerator crisper cover AND end cap. Total	112.87
Missing oven rack	61.09
Broken <i>lazy susan</i> shelf	28.00
broken cabinetry - hardware	0
Missing Master Bedroom curtain rod	99.39

Broken bsmt patio door curtain rod / blinds replacement	99.39
Broken master bedroom screen door	39.20
Missing vertical mirror from basement room	0
Missing pool vacuum	81.76
Missing/broken garage door remote unit	67.19
Removal of tenant refuse / wooden entertainment unit	0
Cleaning 5 hrs. x \$20 – landlord's labour	100.00
Yard / lawn - remedy / clean up	400.00
Refrigerator damage (dents, scratches) – loss of value – verbal estimate from selling store that item would be discounted from retail sale price by \$500.00.	150.00
Carpet cleaning - all rooms	351.75
Filing fee	50.00
subtotal	\$ 4041.04
<i>Minus tenant's security deposit held - (doubled)</i>	<i>- \$ 2000.00</i>
<b>Total monetary award – to landlord</b>	<b>\$2041.04</b>

### **Conclusion**

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

**I Order** that the landlords retain the security deposit \$1000.00 they hold in trust in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2041.04**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 21, 2016

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**Residential Tenancy Branch**

