



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MND MNR FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee.

An agent for the landlord (the "agent"), and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. The tenants confirmed that they received and reviewed the landlord's documentary evidence prior to the hearing. The tenants also confirmed that they did not submit documentary evidence in response to the landlord's application.

### Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A five month fixed term tenancy began on May 1, 2011 and reverted to a month to month tenancy agreement after September 30, 2011. The tenant's rent was subsidized with the tenant's portion being \$237.00 at the start of the tenancy, and at the end of the tenancy it was \$288.00 per month. A security deposit and pet damage deposit were not paid during the tenancy. The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
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Item 1. Replace and repair doors	\$349.00
Item 2. Painting	\$250.80
Item 3. Unpaid November 2014 rent	\$288.00
<b>TOTAL</b>	<b>\$887.80</b>

Regarding item 1, the agent presented the tenant's written notice to vacate the rental effective November 14, 2014 at 1:00 p.m. There is no dispute that the tenant signed the written notice to vacate the rental unit. The agent referred to the condition inspection report submitted in evidence. The agent was unable to present any documentary evidence to support that an outgoing condition inspection was scheduled with the tenant for November 24, 2014 or that any other date was scheduled with the tenant. As a result, I find the outgoing condition inspection report fails to comply with section 35 of the *Act* and is not valid as a result.

The tenant did not agree with item 1 as claimed by the landlord which is the amount of \$349.00 to replace and repair doors. The tenant denied that a door existed in the rental unit as claimed by the landlord. The landlord did not submit a photo to support that there was a door as claimed. The tenant also denied damaging a door during the tenancy. The landlord submitted a copy of an interior work order in evidence.

Regarding item 2, the landlord has claimed \$250.80 which was reached by taking into account the depreciation of the interior paint. The landlord calculated the total painting cost of \$2,292.53 and dividing that amount by 48 months which is \$47.77. The landlord then calculated 5 months that the tenant was not in the rental unit for the 48 month period which totaled \$238.85 and added GST for a total of \$250.80. The tenant claims that he planned on returning to the rental unit to repaint the walls on the 28<sup>th</sup> and 29<sup>th</sup> of November 2014. The landlord repainted the walls that the tenant had painted during the tenancy and failed to return to the original colour before giving notice to vacate the rental unit on November 14, 2014. The landlord submitted a copy of the painting invoice in evidence.

Regarding item #3, the parties reached a mutual agreement during the hearing pursuant to section 63 of the *Act*. The mutual agreement between the parties was that the tenant agreed to pay \$288.00 as claimed for unpaid November 2014 rent. This amount will be accounted for later in this decision.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – As mentioned above, I find the outgoing condition inspection report to be invalid as there is insufficient evidence before me to support that an outgoing condition inspection report was scheduled by the landlord in accordance with section 35 of the *Act*. Therefore, I afford no weight to the outgoing condition inspection report. I also note that the landlord failed to provide other documentary evidence to support the landlord's claim such as photos of the doors being claimed for at the start of the tenancy. As a result, I am left with disputed verbal testimony to consider. Therefore, as the landlord has the onus of proof, I find the landlord has failed to meet the burden of proof. **I dismiss** this portion of the landlord's claim accordingly.

**Item 2** – As the tenant provided written notice that he would be vacating the rental unit on November 14, 2014, I find that his testimony claiming that he was planning to repaint the rental unit weeks later on November 28<sup>th</sup> and 29<sup>th</sup> of 2014 to be unreasonable. Therefore, I accept the receipts and photos as sufficient evidence that the rental unit required repainting and that the landlord has complied with section 7 of the *Act* by applying the appropriate depreciated value for the interior paint which is four years useful life according to Residential Tenancy Branch Policy Guideline #40 – Useful Life of Building Elements. Given the above, I find the landlord is entitled to **\$250.80** as claimed as they have met the burden of proof for this portion of the landlord's claim.

**Item 3** – As mentioned above, the parties reached a mutual agreement in the amount of \$288.00 for this portion of the landlord's claim. Pursuant to section 63 of the *Act*, I order the parties to comply with their mutual agreement.

As the landlord's application was mostly successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$588.80** pursuant to section 67 comprised of \$250.80 for item 2, \$288.00 for item 3, plus \$50.00 for the recovery of the cost of the filing fee.

The landlord is granted a monetary order pursuant to section 67 of the *Act* in the amount of **\$588.80**.

### Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim in the amount of \$588.80 and is granted a monetary order pursuant to section 67 of the *Act* in that amount. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 19, 2016

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Residential Tenancy Branch