



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation in the amount of \$14,688.35, authority to retain the Tenant's security deposit and to recover the filing fee.

Both parties appeared at the hearing. D.V., the named Landlord on the application, was in attendance. He confirmed that he is the property owner's son in law and acts as their property manager. The hearing process was explained and the participants were given the opportunity to ask questions. Both parties gave affirmed testimony presented their evidence orally and in written and documentary form, and made submissions to me.

No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Is the Landlord entitled to recovery of the filing fee?

### Background Evidence

Introduced in evidence was a copy of the residential tenancy agreement. This one year fixed term tenancy began March 15, 2012 and continued as a month to month tenancy thereafter. Monthly rent was payable in the amount of \$1,500.00 and the Tenant paid a security deposit in the amount of \$750.00. The tenancy ended pursuant to an agreement reached by the parties

on June 18, 2015 whereby the Tenant agreed to vacate the rental unit by 1:00 p.m. on June 24, 2015. D.V. testified that the Tenant moved out after the hearing on June 18, 2015.

The Landlord submitted in evidence spreadsheets detailing the \$14,688.35 in compensation claimed as follows:

May 2015 rent for rental unit	\$1,500.00
May late fee for rental unit	\$25.00
June 2015 rent for rental unit	\$1,500.00
June late fee for rental unit	\$25.00
July 1- 24, 2015 loss of rent for rental unit	\$1,161.29
D.V.'s time to prepare for June 14, 2015 hearing	\$600.00
D.V.'s time to undertake and document move out inspection	\$50.00
Change locks on rental unit	\$72.80
Replace light bulbs	\$48.00
Replace damaged floor vent	\$5.46
Power wash and clean deck (rental and gas)	\$60.00
D.V. labour to power wash and clean deck	\$60.00
Recovery of liquidated damages from lower rental unit	\$500.00
Loss of rent for May 2015 for lower rental unit	\$795.00
Loss of rent for June 2015 for lower rental unit	\$795.00
D.V. fees charged to owners to show and rental unit	\$858.00
Cost to change lock on lower rental unit	\$72.80
Loss of rent for lower rental unit as new tenant would only rent with lowered rent	\$30.00
Cost of D.V.'s time spent cleaning rental unit	\$294.00
Cost of cleaning for third party cleaners	\$462.00
D.V. Fees charged to show and re-rent rental unit	\$250.00
Disposal fee for rental unit	\$40.00
D.V. labour related to disposal of rental unit items	\$50.00
D.V. labour to repaint "kids bedrooms (2)	\$700.00
Paint supplies and time to repaint kids bedrooms, materials	\$111.34
D.V. labour to repaint entire suite	\$2,602.50
Material to repaint entire suite	\$481.83
Replacement of laundry room closet door	\$25.00
D.V. Labour to repaint damaged doors	\$175.00
Materials to repaint damaged doors	\$43.23
Material for replacement of bathroom tub plug	\$16.02
Labour for replacement of bathroom tub plug	\$25.00
D.V. time to file for retention of damage deposit	\$50.00
D.V.'s time to file for monetary order	\$50.00
D.V.'s time for preparation of order	\$300.00
D.V.'s time to produce/file notices from November 1, 2015 to December 1, 2015	\$200.00
D.V.'s time to produce/file notices from December 1, 2015 to December 8, 2015	\$200.00
D.V.'s time to produce/file notices December 8/9/10, 2015	\$400.00
Toner, paper, postage, office expenses charged by D.V.	\$38.56
Cost to print photos	\$15.52
<b>TOTAL</b>	<b>\$14,688.35</b>

*\*As the Landlord sought compensation for fees charged by D.V. for his time, as well as compensation for expenses relating to a separate lower rental unit, I have added shading to the above table as a means to delineate these claims.*

The Landlord claimed a total of \$4,113.90 for labour to paint the rental unit which he described as a 1,800-2,000 square foot apartment. D.V. further stated that he has been a manager for 15 years and that in this time he claims he has never had to paint the entire suite and that in this case, they tried to clean the walls, but the liquid which was on the walls had penetrated the paint and was not removable. D.V. confirmed that the rental unit was last painted in 2010.

The Landlord also claimed losses associated with the lower rental unit. D.V. testified that the Tenant, C.B., in the lower unit had a one year lease (November 1, 2014 to October 31, 2015) for \$795.00 per month. He further testified that approximately 6 months into C.B.'s lease (April 2015) he gave notice to end his tenancy due to the excessive noise caused by the Tenant.

On April 27, 2015 the Landlord issued a 1 Month Notice to End Tenancy for Cause.

The Landlord testified that he warned the Tenant multiple times that his noise was problematic and that if he did not improve his behaviour he would be evicted for cause. D.V. stated that the Tenant was provided written notice as well as verbal notice that his actions were affecting the renter in the lower suite.

D.V. claimed that they lost their good tenant in the lower suite, C.B., as a result of the Tenant's behaviour. He stated that they did not charge C.B. the liquidated damages provided for in the tenancy agreement because they felt that would not have been conscionable as the reason he ended his tenancy was because of the Tenant's behaviour. Consequently they sought compensation from the subject Tenant for the loss of the \$500.00 in liquidated damages, as well as lost rent in the amount of \$795.00 per month for May and June in the lower unit. D.V. also claimed that it was a "slow time" of year and the rental unit could not be re-rented and were forced to rent the unit at a lowered price; D.V. stated that they were not able to rent the rental unit for the \$795.00 and were only able to rent it for \$790.00 such that they sought \$5.00 per month for six months for a total of \$30.00.

D.V. also sought compensation for 18 hours of cleaning that he claims was required due to the condition of the rental unit. This amount includes sums paid to third parties as well as to D.V.; D.V. confirmed that he charges his time at \$50.00 per hour. He stated the property owners are his father and step mother and that he is the Property Owners' agent. He further testified that the amounts claimed were invoiced to the property owners and paid for by the Landlord such that he believes these are recoverable expenses.

D.V. also sought compensation for his administrative time related to showing the rental, preparing for the current and previous arbitrations.

In reply to the Landlord's claims, the Tenant confirmed the rental unit required some cleaning, although he disputed the amounts claimed. He stated that when they went to arbitration in June of 2015 he requested the ability to move out June 30, 2015 to permit him adequate time to clean the rental unit. He stated D.V. refused his request. The Tenant further stated that he left items

such as the barbeque as he did not have time to deal with this as it was such a “rush job” and there was so much to do.

The Tenant also stated that he did not give the Landlord authority to retain his security deposit and that the Landlord did not perform a move out condition inspection. He stated that the end of the tenancy was hostile and D.V. simply asked that he put the key in the mailbox and did not offer a time to conduct a move out condition inspection. The Tenant also confirmed he gave the Landlord his forwarding address in writing in June of 2015.

The Tenant disputed the Landlord’s claim for painting. He claimed the Landlord’s request to paint the entire rental unit was merely “convenient” as the unit required painting in any case, not because of any damage caused by him or his family.

The Tenant also opposed the Landlord’s request for compensation for alleged losses due to the other renter moving out. He stated that he acknowledged that the sound was an issue but noted that the floors were hardwood and he lived there with a 2 year old and 6 year old.

The Tenant testified that there was another unit below and the renter in this unit lived there for three years, was there when he moved in and is still there.

He stated that the first downstairs renter got engaged and moved. He said this renter and he had a great relationship and there were no issues. He then testified that the other renter who moved out did so because his job was relocated, not because of the Tenant or his family.

In reply to the Tenant’s submissions, D.V. testified as follows. He confirmed that he received the Tenant’s forwarding address in June of 2015. When I asked why he did not apply for dispute resolution within 15 days of receipt as required by section 38, he responded “I was on holidays; I missed the boat on that one”.

In reply to the Tenant’s testimony regarding the other renters, D.V. confirmed that the Tenant was correct in that one renter moved to Ontario because she got engaged, but he claimed “she complained about the Tenant”. He also stated that the other renter was not relocated outside of Victoria and moved because of the Tenant.

### Analysis

I will first deal with the Tenant’s security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required by section 38(1). The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,500.00** comprised of double the security deposit (\$750.00).

I will now deal with the Landlord's claim for compensation in the amount of \$14,688.35.

The Landlord claimed unpaid rent for May and June as well as associated late fees. The Landlord also claimed loss of rent for July 1-24, 2015 as he claimed the rental unit was not ready to be rented due to the condition in which it was left.

Notably, the Tenant did not dispute these sums. As such, I award the Landlord the amounts claimed as follows:

May 2015 rent for rental unit	\$1,500.00
May late fee for rental unit	\$25.00
June 2015 rent for rental unit	\$1,500.00
June late fee for rental unit	\$25.00
July 1- 24, 2015 loss of rent for rental unit	\$1,161.29
<b>TOTAL RENTAL INCOME LOSSES</b>	<b>\$4,211.29</b>

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

I accept the Landlord's evidence with respect to claims relating to the replacement of the locks, light bulbs, floor vent and bathroom tub plug. Again, I note that the Tenant did not dispute these claims. The amounts awarded are as follows:

Change locks on rental unit	\$72.80
Replace light bulbs	\$48.00
Replace damaged floor vent	\$5.46
Material for replacement of bathroom tub plug	\$16.02
Labour for replacement of bathroom tub plug *	\$12.50
<b>TOTAL COST OF REPLACEMENT ITEMS</b>	<b>\$154.78</b>

D.V. testified that he charges the property owners an hourly rate of \$50.00 for his administrative time as well as for painting, cleaning and repairs.

The time charged by D.V. for administrative duties is not recoverable under the *Residential Tenancy Act*. This is a business choice made by the property owners, and while it may be a reasonable business expense, I decline the Landlord's request that the Tenant compensate the property owners for this amount. Accordingly, I dismiss all claims for D.V.'s time attending to administrative duties.

I also decline the Landlord's request for compensation for the \$50.00 per hour amount claimed by D.V. for his time related to cleaning, painting and labour. A more reasonable hourly rate is \$25.00 for such tasks and as such, where such compensation is granted, I have halved the



amounts claimed and noted this with an asterisk. The Tenant conceded that he did not have time to clean the rental unit at the end of the tenancy.

The Tenant also did not dispute the Landlord's claim that the closet doors required replacement. I accept D.V.'s testimony as to the time required to clean the unit as well as the costs associated with replacing and repainting the closet doors as well as disposing of the Tenant's items. Accordingly I award the Landlord the following:

Power wash and clean deck (rental and gas)	\$60.00
D.V. labour to power wash and clean deck *	\$30.00
Cost of D.V.'s time spent cleaning rental unit *	\$147.00
Cost of cleaning for third party cleaners	\$462.00
Disposal fee for rental unit	\$40.00
Replacement of laundry room closet door	\$25.00
D.V. Labour to repaint damaged doors *	\$87.50
Materials to repaint damaged doors	\$43.23
<b>TOTAL COST OF CLEANING and REPAIRS</b>	<b>\$894.73</b>

*Residential Tenancy Policy Guideline 40—Useful Life of Building Elements* provides that interior paint has a useful life of 4 years. D.V. testified that the rental unit was previously painted in 2010. Accordingly, I find painting of the unit would have been necessary in any event and as such I decline the Landlord's claim for compensation for the cost of painting, save and except for the amounts awarded for painting the damaged doors as noted above.

I dismiss the Landlord's claim for alleged losses relating to the downstairs renter moving out prior to the end of his fixed term tenancy. I am unable to find, on a balance of probabilities, and without hearing from C.B., that he moved solely as a result of the Tenant's behaviour. Further, the Landlord chose not to pursue liquidated damages from C.B., which, however principled that may be, is a business choice I find not recoverable from the Tenant. I am also unable to find that the reduced rent accepted for the downstairs unit was in any way related to the subject tenancy.

As the Landlord has been partially successful, I award him half of the \$100.00 filing fee paid for the total amount of **\$50.00**.

In total I award the Landlord the sum of \$5,310.80 for the following:

Total rental losses	\$4,211.29
Total cost of replacement items	\$154.78
Total cost of cleaning and repairs	\$894.73
Filing fee	\$50.00
<b>TOTAL</b>	<b>\$5,310.80</b>

As I have awarded the Tenant the sum of \$1,500.00 these amounts are to be offset against one another such that I award the Landlord the sum of **\$3,810.80**. The Landlord is granted a Monetary Order for this sum and must serve the Order on the Tenant. Should the Tenant fail to pay, the Landlord may file and enforce the Monetary Order in the B.C. Provincial Court, Small Claims Division.

#### Conclusion

The Tenant is awarded \$1,500.00 representing double his security deposit pursuant to section 38(6). The Landlord is awarded the sum of \$5,310.80 for loss of rental income, cleaning and repair of the rental unit, replacement of damaged or missing items and recovery of one half of the filing fee. These amounts are offset against one another such that the Landlord is granted a Monetary Order in the amount of **\$3,810.80**.

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: August 3, 2016

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Residential Tenancy Branch