



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, OLC, FF

### Introduction

This hearing was convened in response to cross applications.

On January 06, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to keep all or part of the security deposit.

The Landlord stated that on January 08, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents.

On June 06, 2016 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of all or part of the security deposit, for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) or the tenancy agreement, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on June 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted to the Residential Tenancy Branch on June 15, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 30, 2016 the Landlord amended her Application for Dispute Resolution to include a claim for lost revenue and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that the 32 pages of evidence that was submitted to the Residential Tenancy Branch on June 30, 2016, which included notice of the amendment, and the 18 pages of evidence that was submitted to the Residential Tenancy Branch on July 04, 2016 were sent to the Tenants, via registered mail, on June 30, 2016. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 26, 2016 the Tenants submitted 20 pages of evidence and 4 photographs to the Residential Tenancy Branch. The male Tenant stated that this evidence was sent to the Landlord by registered mail on July 22, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 02, 2016 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenants by registered mail on August 02, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, lost revenue, and/or mailing costs?

Should the security deposit be retained by the Landlord or returned to the Tenants?

Are the Tenants entitled to double the security deposit?

### Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began in 2012;
- in 2015 they signed a new fixed term tenancy agreement, the fixed term of which began on September 01, 2015 and ended on May 31, 2016;
- the parties signed a mutual agreement to end the tenancy, which was submitted in evidence;
- the mutual agreement ended the tenancy on December 31, 2015;
- the Tenants vacated the rental unit on December 31, 2015;
- the Tenants agreed to pay monthly rent of \$2,150.00 by the first day of each month during the last fixed term of the tenancy;
- the Tenant paid a security deposit of \$1,000.00 in July of 2012;
- a condition inspection report was completed at the end of the tenancy;
- the Tenants provided the Landlord with a forwarding address by writing it on the condition inspection report that was completed on December 31, 2015;
- the Tenants did not give the Landlord written permission to retain any portion of their security deposit; and
- in January of 2016 the Landlord returned a portion of the security deposit, in the amount of \$311.17.

The Landlord stated that she believes her son completed a condition inspection report at the start of the tenancy, although she cannot recall the date that report was completed. A copy of the report was not submitted in evidence. The male Tenant stated that a condition inspection report was not completed at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$638.83, for replacing the carpet. The Landlord submitted invoices to show that the Landlord was charged \$637.84 to replace the carpet. The Landlord stated that the carpet was new in 2009.

The Landlord and the Tenants agree that a bedroom carpet was burned with an iron during this tenancy. The Landlord submitted photographs of the damage to the carpet.

The male Tenant stated that the carpet was not repaired by the Tenants because the Landlord's son told them the Landlord planned to replace the carpet at the end of the tenancy. The Landlord stated that she had not planned to replace the carpet at the end of the tenancy and that she replaced it as a result of the damage.

The Landlord is seeking compensation, in the amount of \$120.00, for cleaning the rental unit. The Landlord submitted a receipt to show this expense was incurred.

The Landlord stated that the bathroom ceiling required cleaning. She submitted photographs of brown marks on the bathroom ceiling. She stated that the marks were not present at the start of the tenancy.

The male Tenant stated that the marks on the bathroom ceiling were present at the start of the tenancy and could not be cleaned.

The Landlord stated that the side of the refrigerator required cleaning. She did not submit photographs of the refrigerator.

The male Tenant stated that the refrigerator was pulled away from the wall and cleaned at the end of the tenancy. He stated that he does not believe the refrigerator required additional cleaning.

The Landlord stated that the side of the stove and the area behind the stove required cleaning. She submitted photographs of the stove and the area behind it. The male Tenant acknowledged that they did not clean the side of the stove or the area behind it at the end of the tenancy.

The Landlord is seeking lost revenue for January of 2016 because the Tenants did not confirm that they would be vacating the rental unit on December 31, 2015 in accordance with the mutual agreement to end tenancy.

The Landlord is seeking compensation for mailing costs.

### Analysis

Section 23(4) of the *Residential Tenancy Act (Act)* stipulates that a landlord must complete a condition inspection report at the start of each tenancy. I find that the

Landlord has submitted insufficient evidence to establish that a condition inspection report was completed at the start of the tenancy. In reaching this conclusion I was influenced by:

- the male Tenant's testimony that a report was not completed;
- the Landlord's acknowledgement that she did not personally complete the report;
- the absence of any evidence from the person the Landlord believes completed the report; and
- the fact that a copy of the report was not submitted in evidence.

Section 24(2)(c) of the *Act* stipulates that if a landlord does not complete a condition inspection report at the start of the tenancy and provide a tenant with a copy of the report, give the tenant a copy of it in accordance with the regulations, the landlord's right to claim against the security deposit for damage is extinguished. As the Landlord has failed to establish that a condition inspection report was completed at the start of the tenancy, I find that her right to claim against the security deposit for damage has been extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the deposit. As the Landlord's right to claim against the security deposit for damage was extinguished, the Landlord did not have the right to file an Application for Dispute Resolution claiming against the deposit for damages. The only option remaining open to the Landlord was to make a claim against the security deposit for something other than damage or to return the security deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, which was January 15, 2016.

As the Landlord has not yet returned the full security deposit and the Landlord did not file an Application for Dispute Resolution for something other than damage by January 15, 2016, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act* the landlord must pay the tenant double the amount of the security deposit. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenants.

In adjudicating this matter I recognize that in June of 2016 the Landlord amended her Application for Dispute Resolution to include a claim for lost revenue. The amendment does not alter my determination that the Landlord must pay double the security deposit, as the Landlord did not claim against the deposit for something other than damage until well after the deadline of January 15, 2016.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the

amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 3(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the bedroom carpet that was damaged at the end of the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet paint is ten years. In the absence of evidence to the contrary, I accept the Landlord's testimony that the carpet was new in 2009. I therefore find that the carpet was approximately seven years old at the end of the tenancy. I therefore find that the carpet had depreciated by seventy percent and that the Landlord is entitled to thirty percent of the cost of replacing the carpet, which is \$191.35.

In adjudicating this matter I have placed no weight on the Tenants' submission that the Landlord intended to replace the carpet at the end of the tenancy. Even if that was true, the Tenants remained responsible for repairing the damage they caused.

I find that the Landlord submitted insufficient evidence to show that the marks on the bathroom ceiling were not present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that they were not present at the start of the tenancy or that refutes the Tenants' submission that they were present at the start of the tenancy.

As the Landlord has submitted insufficient evidence to establish that the bathroom ceiling was not stained at the start of the tenancy, I cannot conclude that the Tenants were required to remove the stains at the end of the tenancy. I therefore dismiss the Landlord's claim for cleaning the ceiling.

I find that the Landlord submitted insufficient evidence to show that the refrigerator was not left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's testimony that it required cleaning or that refutes the Tenants' submission that it was cleaned at the end of the tenancy. I therefore dismiss the Landlord's claim for cleaning the refrigerator.

On the basis of the photographs submitted in evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to clean the side of the stove and the area behind it. I therefore find that the Landlord is entitled to compensation for cleaning this area. The receipt the Landlord submitted shows that she was charged \$24.00 per hour for cleaning. I find it would have taken approximately one hour to clean the stove and the area behind it, and I grant the Landlord compensation of \$24.00.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. On the basis of the Mutual Agreement to End Tenancy that was submitted in evidence and the undisputed testimony, I find that this tenancy ended on December 31, 2015, pursuant to section 44(1)(c) of the *Act*.

As the parties signed a Mutual Agreement to End Tenancy, I find that neither party had a further obligation to notify the other party that the tenancy was ending on December 31, 2015. I find that the Landlord knew, or should have known, that the rental unit would be vacated on December 31, 2015. I therefore dismiss the Landlord's claim for compensation for lost revenue for January of 2016.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process, including mailing costs. I therefore dismiss the Landlord's claim for mailing costs, as they are costs which are not denominated, or named, by the *Act*.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing an Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$315.35, which includes \$191.35 for replacing the carpet, \$24.00 for cleaning, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenants have established a monetary claim, in the amount of \$2,100.00, which is comprised of double the security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two monetary claims and deducting the \$311.17 already paid to the Tenants, I find that the Landlord owes the Tenants \$1,473.48. Based on these determinations I grant the Tenants a monetary Order for \$1,473.48. In the event the

Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: August 17, 2016

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Residential Tenancy Branch