



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

This hearing was scheduled to begin at 11:30 a.m. on November 28, 2016 but I did not dial into the teleconference until almost a full hour after the scheduled start time. When I dialed into the teleconference the Tenant was still in attendance. After dialing into the teleconference I was able to make contact with the Landlord and re-connect him to the teleconference. With the cooperation of both parties we were able to conclude the hearing on November 28, 2016.

The Landlord stated that on May 30, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On November 08, 2016 the Landlord submitted 30 pages of evidence and 8 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on November 08, 2016. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On November 18, 2016 the Tenant submitted 31 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was faxed to the Landlord on November 18, 2016. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

Both 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, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on January 01, 2014;
- the tenancy ended on May 15, 2016;
- at the end of the tenancy the Tenant was paying rent of \$1,365.00;
- there is a clause in their tenancy agreement that requires the Tenant to pay additional rent of \$50.00 per month for each person who occupies the rental unit, other than the two parties named on the tenancy agreement;
- the Tenant paid a security deposit of \$662.50;
- a condition inspection report was completed at the beginning of the tenancy; and
- a condition inspection report was completed at the end of the tenancy, although the Landlord contends it was completed on May 16, 2016 and the Tenant contends it was completed on May 15, 2016.

The Tenant stated that she did not receive a copy of the condition inspection report until it was served to her in November as evidence for these proceedings. The Landlord stated that he does not know if his former agent provided the Tenant with a copy of the condition inspection report prior to November of 2016.

The Landlord is seeking \$4,350.00 for unpaid rent. In support of this claim the Landlord stated that:

- the caretaker told his former agent that there were a total of five people living in the rental unit;
- the Tenant did not ask permission to have any additional occupants;
- he does not know when the additional three people moved into the unit;
- he does not know how long the additional three people lived in the unit; and
- his claim for \$4,350.00 is based on his assumption that the extra three people occupied the unit for the entire tenancy.

In response to the claim of \$4,350.00 for unpaid rent the Tenant stated that:

- her son lived in the rental unit after he was born on December 01, 2014;
- another son lived in the rental unit after he was born on November 21, 2015;
- she did not ask permission to have any additional occupants when her sons were born, as she did not understand she was required to do so;
- she did not pay any additional \$50.00 per month after either of her sons were born; and
- there was never a fifth person living in the rental unit.

The Landlord is seeking compensation, in the amount of \$1,050.00, for replacing the carpet in the rental unit. In support of this claim the Landlord stated:

- when this tenancy began the carpets were not stained;
- the carpets were badly stained at the end of the tenancy and needed to be replaced;
- he does not know what caused the stain;
- he is not aware if the stains were ever reported; and
- he paid a contractor \$1,200.00 to repair the rental unit, \$1,050.00 of which was to replace the carpet.

In response to the claim for replacing the carpet the Tenant stated that:

- the stain on the carpet is from mould;
- they did not notice the stains until she moved her bed at the end of the tenancy;
- she informed an agent for the landlord of the stains the day before the inspection report was completed at the end of the tenancy;
- the mould was a result of moisture leaking from the window.
- The Landlord is seeking compensation, in the amount of \$1,050.00, for replacing the carpet in the rental unit. In support of this claim the Landlord stated:

The Landlord submitted photographs of the carpet, which appears to be damaged by mould.

The Landlord is seeking compensation, in the amount of \$150.00, for replacing the faucet in the bathroom. In support of this claim the Landlord stated that:

- when this tenancy began the faucet was not damaged;
- the faucet was damaged at the end of the tenancy; and
- he paid a contractor \$1,200.00 to repair the rental unit, \$150.00 of which was to repair the faucet.

In response to the claim for repairing the faucet the Tenant stated that:

- her son broke the handle off the faucet;
- after the tenancy ended she purchased a replacement faucet for approximately \$60.00;
- she offered it to the female Landlord and the female Landlord declined the offer, so she returned the faucet to the store;
- she did not attempt to repair the faucet prior to the end of the tenancy; and
- she thinks the Landlord's claim of \$150.00 is excessive.

In adjudicating the claim for the broken faucet I find that a claim of \$150.00 is reasonable, considering the price the Tenant paid for the faucet and that the Landlord paid a third party to install the faucet. I find that the Tenant has the opportunity to replace the faucet prior to the end of the tenancy and that the Landlord was not required to give the Tenant with access to the unit after the tenancy ended for the purposes of repairing the faucet.

The Landlord is seeking compensation, in the amount of \$200.00, for a strata fine. In support of this claim the Landlord stated that he received a fine of \$200.00 because the Tenant had not cleaned an oil stain on her parking stall and he was not aware that the Tenant disputed the fine until after the tenancy ended.

In response to the claim for strata fine the Tenant stated that:

- she received notice that she was being fined \$200.00 for an oil leak at her parking stall;
- after receiving the notice she took her vehicle to a mechanic who confirmed that fluid was not leaking from her vehicle;
- the fluid is not located in an area of her parking stall where it would typically leak from her engine compartment;
- the colour of the fluid on the ground was not consistent with a fluid from her vehicle;
- she contacted the Strata Corporation and disputed the fine; and
- she did not hear back from the Strata Corporation after she disputed the fine.

The Tenant submitted a copy of a letter in which she disputed the \$200.00 fine.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing a parking pass. In support of this claim the Landlord stated that the parking pass was not returned and he paid \$100.00 to replace the pass.

In response to the claim for the parking pass the Tenant stated that she returned the pass to the Landlord, by mail, on May 30, 2016.

During the hearing the Landlord withdrew his claim for a damaged closet door and late fees.

### Analysis

On the basis of the undisputed evidence I find that there is a clause in the tenancy agreement that requires the Tenant to pay an additional \$50.00 per month in rent for each person who occupies the rental unit, other than the two people listed on the tenancy agreement. I find that the Landlord has the right to impose this rent increase pursuant to section 13(2)(v) of the *Residential Tenancy Act (Act)*.

On the basis of the testimony of the Tenant I find that there were three people living in the rental unit between December 01, 2014 and May 15, 2016, which is 17.5 months. I therefore find that she must pay an additional \$875.00 in rent for this period.

On the basis of the testimony of the Tenant I find that there were three people living in the rental unit between November 21, 2015 and May 15, 2016, which is 6.25 months. I therefore find that she must pay an additional \$312.50 in rent for this period.

There is a basic legal principle that places the burden of proof on the person who is claiming compensation or attempting to enforce a term of a tenancy agreement. In these circumstances the burden of proving that the Landlord is entitled to collect additional rent rests with the Landlord. I find that the Landlord has submitted insufficient evidence to establish that there were additional people living in the rental unit other than the aforementioned children.

In adjudicating this matter I have placed little weight on the email from the former agent for the Landlord, dated November 03, 2016, in which he declared that there were 2 adults and three children living in the rental unit. I find that this email carries little weight as it does not establish how the author knew there were two adults living in the unit and it is not sufficient to refute the Tenant's testimony that there was not a second adult living in the unit.

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.

On the basis of the undisputed evidence I find that the carpet in the rental unit was damaged by mould during this tenancy. I find that the Landlord has submitted insufficient evidence to establish that the mould on the carpet was the result of the Tenant's action or neglect. I find it entirely possible that the mould in the unit was the result of leaking windows, as the Tenant contends, and that she did not notice the damage until her bedroom furniture was moved.

As the Landlord has failed to establish that the carpets were damaged as a result of the Tenant failing to comply with the *Act*, I dismiss the Landlord's application for compensation for replacing the carpet.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the faucet that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the \$150.00 for the cost of replacing the faucet.

I find that the Landlord submitted insufficient evidence to establish that the Tenant was responsible for the stain in her parking stall. In reaching this conclusion I was heavily influenced by the absence of any evidence that shows the Strata Corporation investigated the source of the stain after they received the letter from the Tenant in which she disputed the fine.

When one party, such as a strata corporation, alleges that a second party has damaged something and the second party disputes the allegation, the party making the claim has

an obligation to provide some evidence to support the allegation. In these circumstances there is no evidence that the Strata Corporation made any effort to ascertain the source of the stain and I therefore cannot conclude that the Tenant is obligated to pay the fine. I therefore dismiss the claim to recover the \$200.00 fine.

I find that the Landlord submitted insufficient evidence to establish that the Tenant did not return her parking pass at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that the pass was not returned or that refutes the Tenant's submission that it was returned. I therefore dismiss the claim for replacing the parking pass.

Section 36(2) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage to residential property is extinguished if the landlord does not comply with portions of section 35 of the *Act*. I specifically note that although a landlord's right to claim against a security deposit for damage to the rental unit may be extinguished pursuant to section 36(2) of the *Act*, the Landlord's right to claim against the deposit for unpaid rent is not extinguished. As the Landlord has made a claim for unpaid rent, I find that I do not need to determine if his right to claim against the security deposit has been extinguished.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,437.50, which includes \$1,187.50 in rent, \$150.00 for replacing the faucet, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$662.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$775.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: November 29, 2016

---

Residential Tenancy Branch

