



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security and pet deposit?

### Background and Evidence

The parties agreed that this tenancy started on September 01, 2013 for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit was \$1,475.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$737.50 on August 03, 2013 and a pet deposit of \$737.50 on August 31, 2013. The tenancy ended on June 01, 2016. The tenant provided a forwarding address in writing on May 31, 2016.

The landlord testified that at the start of the tenancy he completed a move in inspection report with the tenant and a copy of this was provided to the tenant and in evidence for this hearing. At the end of the tenancy the landlord testified that he did complete a move out condition inspection report with the tenant and provided a copy to the tenant. The landlord has not provided a copy of this move out report in documentary evidence.

The landlord testified that the tenant caused damage to the mature shrubs along the property line. The landlord referred to his photographic evidence showing the front of the property and photos from Google earth showing a full line of shrubs 12 feet tall. The tenant removed all of these except one tree. These shrubs offered shade from the sun and privacy. The landlord testified that the tenant also topped a tree which the landlord had planted in 2009 and this was to shield the landlord's windows from the sun in the upper unit. The tenant had also cut all the lower branches from the laurel trees that acted as landscaping along the back fence. These lower branches will not grow back.

The landlord testified that he never gave the tenant permission to remove these shrubs and in the addendum to the tenancy agreement, clause five states that the tenant is not to destroy or cut away perennials or shrubs. The landlord referred to an email estimate from a landscaper who came out to view the property. This estimate is for \$1,500.00 to replace the shrubs. The landlord testified that he works away from home and is only home on weekends and he has a bad back so is unable to do this work himself. The

landlord testified that he has not yet had the shrubs replaced. The landlord testified that he cannot replace the laurel trees as they were mature trees and although he has suffered a loss he is not making a monetary claim for these trees.

The landlord testified that the tenant left the rental unit reasonably clean; however, there were areas that required additional cleaning such as the dishwasher and under the appliances. The appliances were on wheels and could have been moved by the tenant. Further to this there were garbage bags left which were overflowing the bins and these had to be removed. The landlord testified that a friend helped him clean the unit and remove the garbage and they spent around 10 hours doing this work. The landlord seeks to recover \$100.00 for cleaning.

The landlord testified that during the tenancy the tenant sent the landlord an email to inform him that the bathroom sink was cracked. In this email, which has been provided in documentary evidence, the tenant has stated her daughter dropped a shelf into the sink. The sink is an under mounted unit set in granite. The landlord was able to purchase just the sink for \$129.95 and had a friend replace it. His friend's labour costs were \$225.00. The landlord referred to his documentary evidence showing the cost of the sink and the receipt for his friend's labour costs. The landlord seeks to recover the amount of \$354.95 from the tenant.

The landlord testified that the tenant caused some damage to a towel rail in the bathroom.. Previously the landlord had moved the towel rail and it was screwed into the studs. The landlord testified that this as not a cheap towel rail and although he has not yet replaced it he has provided some comparisons for \$117.50, \$157.50 and \$185.00. The landlord had estimated the cost to be \$50.00 for the new towel rail and his labour to replace it.

The landlord testified that the tenant did not return a key at the end of the tenancy. The door had a code lock installed but the tenant was shown where the spare key was located in case the batteries on the lock failed. The key was missing from its hiding

place and the landlord seeks to recover \$30.00 for a new key including the landlord's time to go and get one.

The landlord seeks an Order to be permitted to keep the security and pet deposit in partial satisfaction of his claim. The landlord also seeks to recover the filing fee of \$100.00 from the tenant.

The tenant disputed the landlord's claim in its entirety. The tenant testified that although the landlord did do a move out inspection of the unit and filled in a report, a copy of this report has never been provided to the tenant. Furthermore, it is not in the landlord's evidence package and the tenant has no idea of the contents of this report.

The tenant testified that with regard to the shrubs and trees, the tenant had to cut back the laurel trees as they over hung the gate and every time it rained the tenant would need an umbrella to go under the trees. The landlord had never cut the trees or shrubs back. The tenant testified that she was allowed to do work in her section of the yard and she redid this section to make it look attractive. After this the landlord was pleased with her efforts and would show the tenant's yard to various people. The landlord asked the tenant to do the front yard on several occasions. The tenant kept refusing but the landlord told the neighbours and a visiting friend of the tenants that she was going to do the front yard so one day she decided she would do the work required to clean it all up. The rose bushes the landlord has referred to are classed as obnoxious weeds but when the landlord came home and saw the tenant had taken them all out by the roots the landlord only said he had liked the roses. The landlord never gave the tenant any instruction as to what she could do in the front yard.

The tenant testified that as for the laurel trees these were trimmed back by the tenant and the neighbours trimmed them on their side of the fence as they were hanging over and in the way.

The tenant testified that with regard to the landlord's claim for cleaning; the tenant has no idea when the landlord's photographs of the unit were taken. The tenant does

however refer to her own photographic evidence showing that the unit was left in a very clean condition and testified that her photographs show her housekeeping kept the unit clean and tidy. The tenant testified that she did not see the landlord take any photographs at the move out inspection and when he looked in all the appliances he said everything looked good. The tenant testified that as for the garbage; the tenant and her daughter carried all excessive garbage out to other garbage cans somewhere else. The landlord's photographs show the garbage cans at the back of the property yet the cans were always kept at the front of the property.

The tenant testified that with regard to the landlord's claims that she is responsible for the cracked sink; the sink had a hairline crack when they first moved into the unit and it was not noticed when they did the move in inspection but rather was noticed along with some other things a little later, this was pointed out to the landlord but the landlord did not record it on the report. The sink became damaged when the tenant's daughter opened a bathroom cabinet and a shelf which was only held on by two instead of four knobs fell into the sink and cracked it further. The landlord wanted to just fill the crack with filler but as this would have looked unsightly the landlord purchased a sink from home depot which only cost \$75.00. the landlord then had a friend come and fit it some three months later. The landlord says that his friend owed him a favour and the tenant disputes that the receipt provided in evidence is a genuine receipt from this friend as it has been written by the landlord.

The tenant testified that with regard to the damage to the towel rail. The towel rail is a cheap Glacier towel rail that costs around \$16.00. When the tenant moved into the unit they noticed it had been moved twice as the walls had not been patched properly and the towel rail was already wobbly. The tenant referred to her photographic evidence showing the towel rail. At the end of the tenancy the towel rail was in the same condition as when the tenant moved in.

The tenant testified that with regard to the missing key; the tenant was never given a key to the unit as there was a code lock on the door. The landlord had said there was a key hidden in the vent by the door. On one occasion the battery in the code lock failed

and the tenant remembered the landlord saying there was a key to get back into the unit; however, when the tenant looked for the key it was not there. The tenant also recalls the landlord saying that he had taken the key.

The tenant seeks a Monetary Order to recover the security and pet deposit.

Final submission for the landlord – The landlord testified that there were some damaged items that were not mentioned on the move in report but the sink was not cracked and the tenants dropped something in the sink. The tenant's claim that she cut the tree branches because they dripped water is untrue as all branches will drip when it rains and the tenant had a clear path to her door. The landlord testified that some of the components to his claim are for labour costs. The landlord disputed that he ever asked the tenant to do work in his front garden.

The tenant asked the landlord why he has not provided receipts for the things he has claimed. The landlord responded that he does have a receipt for the man who replaced the sink. The landlord wrote this out and gave this man a copy of it. The tenant asked the landlord why it is when she called the landscaping company who provided the email estimate told her that they had not been out to look at the property or done a design for landscaping. This email is not a proper quote and is not on letter headed paper from that company. The landlord responded that he called the company and asked for a quote and this is what they gave him as the landlord was not yet ready to have work done. The lady from this company did come out and have a look at the property. The tenant asked the landlord why the estimate does not detail what plants would be put in. the landlord responded that he does not know how to show a cost for mature plants. The woman from the company said flowering rose bushes would be about \$100.00 each and there were five taken out plus labour costs.

### Analysis

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find as follows:

With regard to the landlord's application for \$1,500.00 to replace shrubs removed by the tenant. I have considered clause five of the addendum to the tenancy agreement; this clause specifically instructs the tenant that she may plant flowers in the north gated area but is not to destroy or cut away any perennials or shrubs. I find this section of the addendum relates to the North end of the yard area which was included for the tenant's use for her tenancy.

I am satisfied from the evidence before me that the tenant did cut back the laurel trees despite this clause in the addendum and find the tenant did take out the shrubs in the front yard without the landlord's express permission. There is insufficient evidence from either party as to any agreement between for the tenant to do work in the front yard and when both parties testimony is equally probable then the burden of proof has not been met; however, the landlord has not yet had the work done to replace the shrubs and I

find the email estimate to be inadequate to meet the burden of proof that the replacement of five shrubs including labour would amount to \$1,500.00. The landlord has insufficient evidence to show anyone came out from the landscaping company to provide a quote for this work and I find that in order to mitigate any loss this work would not necessarily need the services of a landscaping company. Consequently, it is my decision that the landlord has only met part the above test and therefore I must limit his claim to **\$200.00** to replace the shrubs in the front yard including the cost of shrubs and any labour incurred.

With regard to the landlord's application to recover \$100.00 for extra cleaning in the unit; under the *Residential Tenancy Act* (Act) a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of the landlord's claim is dismissed.

With regard to the landlord's application to replace the sink; I am satisfied that the sink became cracked during the tenancy when an object fell into the sink. I am not satisfied there is sufficient evidence to show that the sink was already cracked at the start of the tenancy. If the tenant had issues about this when she moved in the tenant should have insisted that it was added to the move in report or at least taken dated photographs showing a pre-existing crack. I do however find that the landlord has not provided a receipt for the sink purchased and has instead simply provided documentary evidence from an online site showing a sink for \$129.95. Furthermore, I refer the parties to the Residential Tenancy Policy Guidelines #40 which shows the useful life of building elements. This guideline states that the useful life of a sink is 20 years therefore some depreciation must be expected on a sink that was five years old at the time it was broken. The tenant testified that the sink came from Home Depot and retails at around \$75.00 not \$129.95 alleged by the landlord. As the landlord has the burden of proof in



this matter to show the actual cost for the sink I must limit the landlord's claim to \$75.00 less 25 percent for depreciation to a total amount of **\$56.25**. Furthermore, I am not fully satisfied that the receipt in question for the labour to replace the sink is a legitimate receipt as it was written by the landlord and not signed by the person who was paid to do this work. I therefore limit the landlord's claim for labour costs to **\$200.00**.

With regard to the landlord's application for \$50.00 or more for the replacement towel rail. I am not satisfied the landlord has met the burden of proof that this damage was caused by the tenant or that a replacement towel rail for a like for like quality would fall into the range shown in the landlord's documentary evidence gained from an online site. These towel rails do not appear to be of a superior quality to the one in the unit. I therefore find the burden of proof has not been met and this section of the landlord's claim is dismissed.

With regard to the landlord's application for a replacement key; the key was never provided to the tenant and therefore as both the tenant and landlord had access to this key I find the landlord has not met the burden of proof to show that the key was lost by the tenant. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's application to keep the security and pet deposit; I refer the parties to s. 36(2)(c) of the *Act* which states:

*(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*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

There is insufficient evidence to show that the landlord provided a copy of the inspection report to the tenant at the end of the tenancy. Certainly no copy of this report has been

provided in documentary evidence by either party. I must therefore conclude that the landlord has extinguished his right to file a claim against the security or pet deposit for damage to the unit.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security or pet deposit where it is necessary to give effect to the rights and obligations of the parties.

Consequently, I order the Landlord to keep the part of the security deposit to compensate the landlord for the damages he has been awarded at this hearing.

As the landlord's application has some merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*.

Replacement shrubs and labour	\$200.00
Replacement sink and labour	\$256.25
Filing fee	\$100.00
<b>Total amount due to the landlord</b>	<b>\$556.25</b>
Less security deposit	(737.50)
<b>Total amount of security and pet deposit to be returned to the tenant</b>	<b>\$181.25 for the security deposit</b> <b>\$737.50 for the pet deposit</b>

### Conclusion

I hereby find in partial favor of the landlord's monetary claim. The landlord is ordered to retain the amount of **\$556.25** from the tenant's security deposit. The balance of the security deposit and the pet deposit must be returned to the tenant.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$918.75** pursuant to s. 38(6)(b) and 67 of the *Act*. The Order must be served on the landlord.

Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: December 13, 2016

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Residential Tenancy Branch