



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MNSD, FF (Tenant's Application)  
                             MNR, MNSD, MND, MNDC, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on June 10, 2016, she sought an Order canceling a Notice to End Tenancy for Cause, return of her security deposit and recovery of the filing fee. In the Landlord's Application for Dispute Resolution filed on June 13, 2016 they sought monetary compensation for unpaid rent, damage to the rental unit, compensation for loss, and recovery of the filing fee as well as authority to retain the Tenant's security deposit.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

During the hearing on December 6, 2016 I advised the Landlord that the photos submitted to the Branch through Service B.C., were not viewable. By Interim Decision dated

The parties agreed that all evidence that each party provided had been exchanged. 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, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the outset of the hearing the parties confirmed that the tenancy had ended such that the Tenant's request to cancel the Notice to End Tenancy for Cause and the Tenant's request for an Order restricting the Landlord's right to enter the rental unit was no longer required.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent and damage to the rental unit?
2. What should happen with the Tenant's security deposit?
3. Should either party recover the filing fee?

### Background and Evidence

M.T. testified on behalf of the Landlords. Also introduced in evidence was a copy of the "Lease—Basic Rental Agreement or Residential Lease" (hereinafter referred to as the "Tenancy Agreement") which provided that the fixed term tenancy began on September 1, 2015 and was to end February 1, 2016. The Tenancy Agreement provided that monthly rent was payable in the amount of \$950.00. The Tenant also paid a security deposit of \$475.00 and a pet damage deposit in the amount of \$237.50.

M.T. confirmed that the Landlord failed to perform a move in condition inspection. M.T. provided in evidence a copy of the move out condition inspection report which was completed on June 9, 2016 and which also indicates that a move in condition inspection was not completed.

M.T. testified that she received a text message from the Tenant on April 28, 2016 indicating she would be vacating the rental unit. M.T. further testified that she understood that the Tenant would be moving out at the end of June 2016 because the Tenant wrote "I am giving notice for the end of May". M.T. testified that in early May they realized there was a miscommunication about the Tenant's move out date. M.T. informed the Tenant that her notice needed to be in writing. She stated that she offered to "split the loss of rent" with the Tenant but, the Tenant did not agree to this offer.

M.T. testified that the Tenant moved out on May 31, 2016. M.T. testified that she attempted to perform a move out condition inspection at the time, by sending a text and email to the Tenant. She stated that when the Tenant refused to respond, she issued a

notice of Final Opportunity to Schedule a Condition Inspection on June 6, 2016. A copy of this Notice was introduced in evidence and confirmed the Landlord intended to do the inspection at 4:00 p.m. on June 9, 2016.

Introduced in evidence was a copy of the Monetary Order Worksheet completed on June 13, 2016 wherein the Landlords claimed the following:

Landscaping (filling holes and leveling the lawn) as a result of pet damage (quote)	\$262.50
Cleaning of the rental unit (quote)	\$380.00
Landlord's time to clean and weed rental yard	\$50.00
June 2016 rent	\$950.00
TOTAL	\$1,642.50

M.T. testified that she spent 12.5 hours cleaning the rental unit.

M.T. testified that they re-rented the rental unit as of July 1, 2016. She confirmed that she advertised the rental unit on a popular internet buy and sell website. She stated that she had a lot of people who applied but no one was willing to move in sooner. M.T. confirmed that they interviewed each prospective tenant as the rental unit is on the main level and the Landlords live above the suite.

The Tenant testified on her own behalf in response to the Landlords' claims as well as in support of her claim. The Tenant confirmed that she is seeking return of her pet damage deposit and security deposit in the amount of \$712.00.

The Tenant confirmed that there was no move in condition inspection report. The Tenant also stated that she asked for one and was told it would be conducted at the "end of the week" and then it was never done.

The Tenant further testified that she sent a text message to the Landlord on April 28, 2016 giving her notice to end her tenancy effective the end of May; she confirmed that she did not give *written notice* as required by section 52 of the *Residential Tenancy Act*.

In response to the Landlords' claim regarding holes in the lawn, the Tenant claimed that her dog does not dig and therefore did not cause the damage to the lawn. She further stated that there was a hole in the lawn from the septic and the other holes are simply from the "summer of drought followed by a wet winter".

In response to the Landlords' claims regarding cleaning the rental unit, the Tenant stated that she and her mother cleaned the rental unit when she left. She confirmed that she did not participate in the move out condition inspection, although she attempted to communicate with the Landlord that she had someone who would do the inspection for her. She stated that she received an email from the Landlord requesting an inspection on June 9, 2016.

### Analysis

The Landlords seek monetary compensation for loss of rent for the month of June 2016.

I accept the evidence of the parties that the Tenant gave notice to end her tenancy by text message sent April 28, 2016. Neither party provided a copy of this text message in evidence.

The Landlord testified that in early May she realized that there was a misunderstanding between her and the Tenant as to the effective date of the Tenant's Notice, and that at that time she requested that the Tenant provide written notice. Neither party testified as to whether the Tenant provided the requested written notice.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Residential Tenancy Act*, which provide as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find the Tenant's text message of April 28, 2016 fails to comply with the above and accordingly find it insufficient to end the tenancy as of May 31, 2016.

I accept the Landlords' evidence that when they discovered in early May 2016 that the Tenant intended to vacate the unit at the end of May, they made their best efforts to re-rent the rental unit and did so as of July 1, 2016. Accordingly, I award them compensation in the amount of **\$950.00** for the loss of rent for June 2016.

The Landlords also seek compensation for cleaning and repair of damage to the rental unit.

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 Landlords have 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.

Introduced in evidence by the Landlord were photos of the rental unit which depicted the following:

- the grass was patchy and uneven;
- the garden was not weeded;
- lights were not replaced in the bedroom or bathroom;
- the bedroom and living room window and patio door track appear as though they were not cleaned;
- the side of the stove as well as the oven racks were not wiped;
- the stove drip pans were not cleaned or replaced;
- small amounts of dust and dirt on the floor, ceiling and walls;
- the kitchen cupboards and drawers showed small amounts of dirt; and
- the area under the refrigerator and stove were not cleaned.

Based on these photos, as well as the testimony of the Landlord, I find as follows. I find that the Landlords have proven their claim for compensation for landscaping due to the uneven yard. I grant them the **\$262.50** for the estimated landscaping costs to repair the lawn.

The Landlords claim they spent over twelve hours cleaning the rental unit. Based on the photographic evidence before me, I find the rental unit required some cleaning; however, I find the \$380.00 claimed by the Landlords for cleaning to be excessive. While the Landlords may have expected the Tenant to do a more thorough job of cleaning, the photos indicate the rental unit was cleaned to a *reasonable standard* at the end of the tenancy; further, most of the photos depicted small amounts of dust and dirt. On the other hand, I find that the Tenant failed to clean the oven and stove as well as under the refrigerator and stove as required. I further find the Tenant failed to wipe the window sills and patio doors as required. In total, I grant the Landlords compensation in the amount of **\$60.00** for cleaning of the rental unit as well as the Landlords' time to tend to the yard work at the end of the tenancy.

In total, I award the Landlords the sum of **\$1,272.50** for the following.

Landscaping (filling holes and leveling the lawn) as a result of pet damage (quote)	\$262.50
Compensation for cleaning of the rental unit	\$60.00
June 2016 rent	\$950.00
<b>TOTAL</b>	<b>\$1,272.50</b>

The Landlords seek authority to retain the Tenant's deposits and the Tenant seeks their return.

The Tenancy Agreement provides that the Tenant paid a security deposit of \$475.00 and a pet damage deposit in the amount of \$237.50.

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.

I find the Landlords are entitled to retain the Tenant's security deposit of **\$475.00** as partial payment of the \$1,272.50 amounts awarded to them leaving a balance owing in the amount of **\$797.50**.

I find that the Landlords, in failing to perform a move in condition inspection, extinguished their right to claim against the pet damage deposit. A pet damage deposit can only relate to *damage* caused by a pet, therefore, pursuant to section 24(2) and 38(5), the Landlords had no right to retain the pet damage deposit. As the Landlords had no right to claim against the pet damage deposit, their only option pursuant to section 38(1) was to return those funds; in failing to do so, they must pay the Tenant the sum of **\$475.00** representing double the \$237.50 pet damage deposit.

As the parties have enjoyed divided success, I find they are to be responsible for payment of their filing fees.

The amounts awarded to the parties (Landlord:  $\$1,272.50 - \$475.00 = \$797.50$ ) and Tenant (\$475.00) are to be offset against one another ( $\$797.50 - \$475.00 = \$322.50$ ); accordingly, I award the Landlord a Monetary Order in the amount of **\$322.50**. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The Tenant failed to provide proper notice to end the tenancy and as such the Landlord is entitled to recovery of the June 2016 rent in the amount of \$950.00.



The Landlords' are entitled to the sum of \$322.50 for compensation for the estimated cost of repairing the landscaping and cleaning of the rental unit and yard.

The Landlords are entitled to retain the Tenant's security deposit of \$475.00 as partial payment of the amounts awarded, but must pay the Tenants \$475.00 representing double their pet damage deposit as a consequence of failing to perform a move in condition inspection.

Neither party shall recover the filing fee from the other.

The amounts each party is awarded are to be offset against one another such that the net result is that the Landlord is entitled to a Monetary Order in the amount of **\$322.50**.

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: January 16, 2017

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Residential Tenancy Branch