



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MND, MNR, MNSD, CNR, CNC, FF**

### Introduction

This was a cross-application hearing.

The tenant applied on December 8, 2016 to cancel a series of 10 day Notices to end tenancy for unpaid rent and a two month Notice ending tenancy for cause.

On December 12, 2016 the landlord applied requesting an order of possession based on unpaid rent, compensation for unpaid rent and damage to the rental unit, to retain the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant confirmed that effective January 2, 2017 the landlord was provided with vacant possession of the rental unit. The landlord confirmed that an order of possession is not required.

The landlord reduced the claim for unpaid rent from \$4,600.00 to \$2,300.00.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and damage to the rental unit?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

The tenancy commenced on July 15, 2012. Rent was \$1,150.00 due on the first day of each month. The landlord is holding a security and pet deposit in the sum of \$575.00 each.

A move-in condition inspection report was not completed. The parties confirmed they met at the end of the tenancy to complete a move-out inspection.

The landlord has claimed the following compensation:

Re-key	117.09
Door	558.88
Install and paint door	500.00
Replace granite counter where broken	2,600.00
Rent	2,300.00
TOTAL	\$6,075.97

There was no dispute that the landlord had the door re-keyed on November 8, 2016. The tenants' spouse had moved out of the home and the tenant was not sure if he still had a key. The tenant requested the rental unit be re-keyed. The tenant agrees the landlord was entitled to deduct the sum claimed for keys from the deposits.

The parties agreed that in November 2016 the tenants' ex-spouse broke into the home by kicking the door. The door and the door jamb were damaged. The landlord has claimed the cost of replacing the door.

The tenant agrees that her ex-spouse broke the door. The tenant was not in the home at the time and did not invite her ex-spouse onto the property. The tenant said that while the person who did this damage had had a relationship with her, it could have been anyone who broke the door. The tenant questioned why it would be her fault just because she knew the person who caused the damage. The tenant wished the damage could have been prevented.

The landlord said he does not know how the damage would have occurred to the almost-new counter top. There were three cracks at the front of the sink and a single crack at the rear of the sink. The landlord wonders if someone climbed through the window over the sink and caused this damage. The landlord was made aware of the damage when the tenant reported the break-in. The tenant told the landlord that a heavy, frozen turkey had been left in the sink and that the weight had caused the sink to come loose.

The tenant agreed that the counter around the kitchen sink cracked. The tenant had placed a frozen turkey and water in the under-mount sink and had left it for some time. When the tenant returned she found the sink had dropped approximately one half to

one inch below the counter. Three cracks had appeared in the granite counter top. The tenant examined the supports for the sink that were under the counter. There were no screws holding the sink in place. The only support for the sink was a little aluminum bracket. The tenant said the window does not allow someone to easily pass through, due to the size, and that no one climbed on the counter.

The landlord supplied a ledger showing all rent payments made since the tenancy began, to May 2016. The sums paid from May to December 2016 were provided orally, as the ledger was not fully reproduced when sent via facsimile.

The landlord said that initially he believed the tenant owed \$4,600.00. The tenant provided the landlord with bank statements covering the period of the tenancy. The landlord was able to reconcile the bank statement against the payment ledger. The landlord located two payments that he had not recorded onto the ledger; one in August 2014 and another in June 2015. The sum claimed was then adjusted downward. The ledger showed that the last zero balance owed was April 2014.

The tenant confirmed that December 2016 rent was not paid. The tenant said that no other rent was owed. The tenant was given an opportunity during the hearing to reconcile her bank statements against the payment ledger supplied by the landlord. The only two inconsistencies the tenant could locate were the same that the landlord had discovered. The tenant could not point to any other month where the sum paid differed from what the tenants' bank statement showed as paid.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based on the agreement of the tenant, I find pursuant to section 63(2) of the Act that the landlord is entitled to compensation in the sum of \$117.09 for re-keying the rental unit.

I have considered the claim for the damaged door and how that damage occurred. Section 32(3) and (4) of the Act provides:

*(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

There was no dispute that the tenant knew the person who kicked in the door to the rental unit. However; that person was not permitted on the residential property by the tenant. The tenant was not home at the time of the offence and had the locks to the home changed so that person could not enter. I can find no evidence of any breach of the Act by the tenant that would require the tenant to assume responsibility for the actions of an uninvited person. Therefore, I find that the claim related to the door damage is dismissed.

I have considered the testimony regarding the counter damage and find that the landlord has not proven on the balance of probabilities, that the tenant or a guest of the tenants' caused this damage. The landlord can only assume how the damage was caused. What is agreed is that the under-mount sink dropped from the counter. There is an absence of any definitive evidence that the tenant caused the counter to crack through some sort of negligence. The landlord has assumed that perhaps someone climbed through the window, causing this damage. There was no evidence to convince me that anyone had climbed through the window. Therefore, I find that the claim for the damaged counter top is dismissed.

Based on the ledger supplied by the landlord; against the tenants' bank statements which the tenant agreed showed all payments made, I find that the landlord is entitled to compensation in the sum of \$2,300.00 for unpaid rent from April 2014 onward to December 2016, inclusive. The tenant believed that only December 2016 rent was unpaid but could not point to any month where an error had been made in calculating the sum of rent owed.

If the tenant discovers proof of payment the tenant is at liberty to present that evidence to the landlord or to bring that evidence forward at the point of enforcement of the monetary order.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security and pet deposits in the sum of \$1,150.00 in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary order for the balance of \$1,367.09. In the event that the tenant does not 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.

Conclusion

The landlord is entitled to a monetary order for unpaid rent.

The landlord may retain the security and pet deposits.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed.

The tenants' application was withdrawn as the tenancy has ended.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2017

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Residential Tenancy Branch