



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes (MNDC), 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 money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement); a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants 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 provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants 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.

### Preliminary Issues

The landlord has requested to be permitted to amend her application to include a Monetary Order to recover a loss of rent for November, 2016. The landlord omitted to check this box on her application but has made mention of this part of her claim in the details of the dispute. I will allow this amendment as the tenant would be fully aware from the details of the dispute that the landlord seeks to recover this loss of rent.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed for a loss of rent?
- Is the landlord entitled to a Monetary Order for damages to the unit, site or property?
- Is the landlord permitted to keep all or part of the security or pet deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on July 15, 2013. Rent for this unit was \$850.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00 on July 15, 2013. The tenancy ended on November 10, 2015.

*A loss of rent* - The landlord testified that the tenant DB gave verbal notice to end her tenancy by telephone on October 22, 2015. The tenants vacated the unit on November 10, 2015. The landlord testified that she attempted to re-rent the unit and put adverts in the paper and on line. The tenants also had a couple of interested people but when the landlord contacted them it was not successful. The tenants had left the unit in a dirty condition and requiring repairs. Eventually the landlord was able to re-rent the unit to a contractor for December 01, 2015 at a reduced rent as he was happy to do some of the work required in the unit. The landlord also gave this contractor the first half of December's rent free because of the condition of the unit. The tenants only paid rent for the first half of November and as they did not provide sufficient notice to end the tenancy the landlord seeks to recover a loss of rent for the remainder of November of \$425.00.

*Cleaning* - The landlord testified that the tenants failed to leave the rental unit reasonable clean. The landlord testified that she went into the unit on November 10, 2015 and took photographs of the condition of the unit. The landlord did not have

access to the move in condition inspection report which the landlord believes her ex business partner, who dealt with this tenancy at the start of the tenancy, had completed with the tenants. The landlord referred to her photographic evidence showing areas of the unit in a dirty condition. The landlord also referred to the cleaner's invoice which details the cleaning that was required in the unit and the removal of debris from the carport and yard.

The landlord testified that the tenant DB had been smoking inside her unit for over a year, despite the tenancy agreement stating no smoking inside the unit. The tenant had also kept animals in the unit who used the floor as a toilet and a bucket of dog feces was removed from the carport. The walls and floor of the unit had to be scrubbed, the bathroom had to be cleaned, all surfaces and counters in the kitchen had to be cleaned, the windows and sills had to be scrubbed, and all the cupboards had to be cleaned. The cleaner has documented that she cleaned the unit for 15.5 hours at \$16.00 per hour. The landlord seeks to recover \$248.00. The landlord has provided a copy of the invoice in documentary evidence.

*Blinds and painting supplies* – The landlord testified that the blinds in the unit had been trashed and these had to be replaced. The landlord also had to purchase paint to paint the unit to try to get rid of the smell of smoke and due to some wall damage. The unit had been completely renovated in March 2012 and only one other tenant had lived in the unit prior to this tenancy. The landlord seeks to recover the amount of \$571.65 for the blinds and the paint. The landlord has provided a copy of the receipt in documentary evidence.

*Front door damage* – The landlord testified that there was a substantial amount of damage to the front door and frame as shown in the landlord's photographic evidence. The tenants had allowed their dog or another dog, they had adopted without the landlord's permission, to claw at the door and frame. The bottom weather strip on the door had also been damaged. The landlord attempted to find the cheapest estimate to replace the door and this estimate does not include any labour cost to fit a new door.

The landlord testified that she believes the door was replaced originally when the renovations were done in March 2012 so the door would only have been three years old at the end of the tenancy. The landlord has provided a copy of this estimate in documentary evidence and seeks to recover the amount of \$310.99.

*Screen door damage* - the landlord testified that the screen door was badly damaged as shown in the landlord's photographic evidence. The bottom section of the screen door was bent in and the screen was torn. The door was also left in a filthy condition. All screens in the unit had been replaced during the renovation in March, 2012. The landlord has provided an estimate to replace the screen door. The landlord seeks to recover \$199.00 which does not include any labour costs to fit a new screen door.

*Security and pet deposits* – The landlord testified that as she did not have a copy of the Move in condition inspection report, at the end of the tenancy she did not do the move out condition inspection of the unit but rather took photographs showing the condition of the unit. The landlord testified that as she is aware the tenant DB is on disability she does not intend to pursue the tenants for the entire costs for all the work required in the unit. The landlord therefore limits her claim to \$850.00 as the amount of the security and pet deposits. The landlord therefore requests an Order to be permitted to keep the security and pet deposits.

*Filing fee* - The landlord also seeks to recover the filing fee of \$100.00.

DB agreed that she only paid half a month's rent for November, 2015 and was not aware she had to give notice sooner. DB agreed that the landlord can keep the security deposit of \$425.00 to cover half a month's rent for November, 2015.

The tenants disputed the landlord's claims for cleaning and damages. The tenant DB testified that the unit was left clean at the end of the tenancy and the landlord came into the unit to take pictures before the tenants had fully moved out and cleaned the unit. DB testified that they had cleaned everything on November 03, 2015. DB had just had

surgery and so the other tenant and DB's daughter cleaned the unit. DB agreed that they did leave a bucket of dog feces in the carport and forgot to remove this.

DB testified that when they moved into the unit the landlord's partner did not do a move in condition inspection report and the blinds, door screen and front door were already damaged. DB testified that she only started to smoke in the unit when she came home from the hospital after her surgery as she could not get outside to smoke. Her surgery took place on October 31, 2015. DB testified that the landlord's partner dealt with the tenancy and when he came to collect rent he saw DB smoking outside.

DB disputed that there were blinds in the unit when she moved in. DB testified that her dog is 13 years old and did not do any damage to the front door and did not use the floor of the unit as a toilet. DB testified that she only had one dog. The front door needed to be washed at the start of the tenancy. There was a sticker left on the door which DB was only able to remove half of.

DB testified that as her dog did not do any damage to the rental unit the tenants seek to recover their pet deposit of \$425.00.

The landlord argued that when she took over managing this tenancy from her ex-partner she saw the tenant multiply times smoking inside the unit and witnessed full ashtrays inside the unit. The tenant always agreed she had been smoking and swore that she would stop after the landlord threatened her with eviction.

The landlord argued that the tenant was allowed one dog as part of the tenancy agreement; however, she adopted another dog for a short time and her daughter would visit and bring her dog for extended periods.

The landlord asked the tenant DB when she got the second dog. DB responded just after she got home from hospital and she only had it for a month. DB asked if her daughter brought her dog. DB responded only when she came to visit. The landlord asked DB if she recalls that the landlord said her daughter could not move into the unit.

DB responded that her daughter never wanted to move in and there was only an issue when DB watched her daughter's dog for a month. The landlord asked DB if she agrees there were marks and damage on the wall in the second bedroom. DB responded no those marks were here when they moved in. Only the living room and DB's bedroom had been painted before she moved in.

DB argued that the previous tenant had a puppy. The tenant TP testified that he scrubbed the counters and walls at the end of the tenancy and left the unit clean.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlords claim for unpaid rent; I refer the parties to s.45 of the Act which states:

**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.*

I am satisfied from the undisputed testimony before me that the tenants gave late notice to end the tenancy and only paid half a month's rent for November, 2015. As the tenant DB has agreed at the hearing that the landlord may keep the security deposit to cover the loss of rent for November of \$425.00 then no further Monetary Order will be issued concerning this matter.

With regard to the cleanliness of the rental unit; under s. 32 of the *Act* the tenant is required to ensure the following things;

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*(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.*

DB argued that the unit was cleaned at the end of the tenancy and that any damage was in place at the start of the tenancy. DB also argued that she only started to smoke in the unit in the last two weeks of their tenancy after she had surgery. Having reviewed the testimony before me I find there are some inconsistencies with the tenants' testimony. DB testified that the other tenant TP and her daughter had cleaned the unit on November 03, 2015 prior to them leaving. Yet the landlord's photographic evidence shows the unit is filthy in many areas and the photographs show that the tenant has appeared to have moved out as there is no longer any of the tenants' belongings shown in the photographs. Furthermore, the landlord has evidence from the cleaner who has documented the cleaning that she did in the unit. I find therefore I prefer the landlord's evidence over that of the tenants and find the landlord has established a claim for cleaning of **\$248.00**,

With regard to the landlords claim for blinds and painting, I find the tenants testimony has some inconsistencies. At first the tenant stated the blinds were damaged when she moved into the unit and then she stated that there were no blinds in the unit. the tenant also testified that she adopted the second dog after her surgery and only kept it for a month . Yet they moved out two weeks after this surgery. I find therefore I prefer the testimony of the landlord concerning damage to the blinds by the tenant and find the landlord has established a claim to recover costs to replace the blinds. On this same claim the landlord seeks to recover costs for paint for the unit. The tenant DB denied

smoking in the unit until the last few weeks of the tenancy, the landlord testified that the tenant smoked continually in the unit and that she witnessed the tenant smoking in the unit and full ashtrays in the unit. I find I prefer the evidence of the landlord in this matter and find on a balance of probabilities that the tenant DB did smoke inside the rental unit. I also find the walls of the rental unit were clearly unclean and had areas of damage. While I accept that there was no move in condition inspection report available to compare the condition of the unit at the start of the tenancy; the tenant TP testified that he had cleaned the walls when clearly the walls had not been cleaned as shown in the photographic evidence. I therefore find the landlord has established a claim to recover the cost for the paint and blinds of **\$571.65**.

With regard to the damage to the front door and the door screen, I am not satisfied from the evidence before me that the front door and door screen were damaged by the tenants. The landlord was not present at the start of the tenancy to confirm the condition of the door and screen when the tenant took possession of the rental unit. While I accept that the door and screen may have been fitted in March 2012 the tenant has testified that the unit was also rented to another tenant who had a dog and it is just as likely that this damage was caused by that tenant's dog. The landlord has insufficient evidence to show the condition of the front door or door screen when the tenant moved in and therefore I cannot conclude that this damage was caused by the tenants' dog or the tenants. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim to keep the security and pet deposit; the tenant has agreed at the hearing the landlord may retain the security deposit in lieu of half a month's rent for November. Therefore, I will address the pet deposit; the landlord's claim for damages totals \$823.65 and her claim for the rent is \$425.00; however, the landlord has limited her claim to \$850.00 in total. I will therefore offset the pet deposit against the remainder of the landlord's monetary award pursuant to s. 38(4)(b) of the *Act*. Up to the limit requested by the landlord.



As the landlords claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00**.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. I Order the landlord to retain the security and pet deposit of \$850.00 pursuant to s. 38(40(b) of the *Act*. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00** for the filing fee. The Order must be served on the respondents. Should the respondents 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: February 08, 2017

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Residential Tenancy Branch