



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASC Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representatives and the tenant attended the hearing. The tenant was represented at the hearing by her advocate.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is an apartment in Kelowna. The Tenancy began on June 26, 2009. The initial monthly rent was \$925.00 and the tenant paid a security deposit of \$462.50 at the start of the tenancy.

The tenant gave notice in July 2016 that she intended to move out of the rental unit. She completed her move-out on August 3, 2016. The tenant did not provide the required one month notice in writing before she moved out. The landlord completed a move-out inspection of the rental unit on August 3, 2016. The landlord's representative testified that the tenant smoked in the rental unit. When she left the carpets needed to be replaced. The unit was very dirty and it needed repairs and a full re-painting in part to deal with the smoke residue and odour in the rental unit. There were dents in the drywall throughout the rental unit. The landlord's representative said they were caused by an "airsoft" gun that fires pellets which left marks and dents in the walls. The landlord submitted photographs showing the condition of the rental unit. The landlord has claimed the following amounts:

- Suite cleaning: \$100.00

• 20% of carpet replacement:	\$326.13
• Counters (damaged)	\$450.00
• Exhaust Fan:	\$50.00
• Smoke seal & painting:	\$600.00
• Overholding for 3 days:	\$96.38
 Total:	 \$1,622.51

The landlord said the tenant did not sign the condition inspection report and did not sign or agree to the move-out charges which were set out on an addendum to the condition inspection report in the amounts set out above.

The tenant and her advocate denied that the tenant was responsible for damage claimed by the landlord. The tenant said this was a seven year tenancy; there were several floods in the rental unit and the tenant is not responsible for the carpet damage that was due to flooding. The tenant said there was existing damage to the counters noted on the condition inspection when the tenancy started. The tenant's advocate noted that the landlord did not submit invoices for any of the amounts claimed. The tenant also said she should not be charged for overholding; she said the landlord agreed that the tenant could have until August 3<sup>rd</sup> to complete her move-out

The landlord's representatives said that flooding that occurred in the unit during the tenancy was caused by the careless actions of the tenant; the countertop damage at the start of the tenancy consisted of some minor chips, not the extensive damage shown in the photographs. The landlord's representative said that the amounts set out on the addendum to the condition inspection report was for work carried out by the landlord's contractors and were properly documented. She said invoices were not submitted due to inadvertence, but they could be supplied.

### Analysis

The testimony of the landlord's representative, the condition inspection report and the photographs of the rental unit taken on August 3<sup>rd</sup> by the landlord's representative satisfy me that the rental unit was not properly cleaned at the end of the tenancy and that there was damage to the rental unit that exceeded normal wear and tear. I find that after a tenancy of this duration the rental unit would be required to be re-painted. The landlord's representatives said that the landlord was claiming only a portion of the re-painting costs and the charge for carpet replacement because more work was required to re-paint the unit due to excessive damage and due to the need to perform extra paintwork to seal the residue and odour from the tenant's smoking in the rental unit.

The landlord's representative said that the landlord was claiming only 20% of the actual cost of carpet replacement to reflect the fact that the carpet was not new when the tenancy began. The landlord's representative said the 20% figure was chosen because it reflected the anticipated remaining life of the carpet had it not been so extensively damaged by the tenant.

The difficulty with the landlord's claim is that the documents needed to establish the actual expenditures from which the extrapolated claims were derived have not been provided to the Residential Tenancy Branch or to the tenant.

I do have evidence of actual loss and damage that was caused by the tenants and despite the absence of invoices some of the claims have been proven. The landlord claimed the sum of \$100.00 for suite cleaning; I find that this is a modest estimate of cleaning costs and should be allowed. The tenant did not give proper notice to end the tenancy and did not move out until August 3<sup>rd</sup>. The landlord limited its claim to a three day overholding charge when it could have claimed loss of rental income for the month of August; I allow the claim for overholding in the amount of \$96.38 as sought.

The landlord did not submit evidence to establish the age of the carpet and the tenant alleged that some of the carpet damage was due to flooding not cause by her. The landlord has not submitted any invoice for carpet replacement; I find that the landlord has not established that the tenant should be responsible for a portion of the cost of new carpet and has not proved the actual expenditure. The claim for a portion of the cost of new carpet is dismissed.

The landlord claimed \$450.00 for counters. There is no invoice for replacing the counters. The move-in inspection noted that the counters were damaged; I find that the landlord has not established that the tenant is responsible for replacement of the counters and the landlord did not submit evidence to show that work was performed or that the counters were replaced; this claim is denied.

The landlord claimed the sum of \$600.00 for smoke seal and painting. The pictures provided by the landlord showed that there was significant damage to the walls that exceeded normal wear and tear and I accept the testimony of the landlord's representative that the tenant's smoking in the rental unit required extra painting and treatment. After a tenancy of seven years there is no question that re-painting would be needed to address normal wear and tear. In the absence of an invoice detailing the painting costs, I find that an award in the amount of \$300.00 is appropriate to reflect the additional work beyond ordinary re-painting required to fix the excessive damage and to perform additional sealing because of the smoke damage.

The landlord provided evidence that the kitchen exhaust fan was clogged and in such disrepair that it had to be replaced at a cost of \$50.00. The exhaust hood and fan was clean and undamaged at the beginning of the tenancy and I find this claim is justified and should be allowed.

The total award to the landlord is the sum of \$546.38. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$646.38. I order that the landlord retain the security deposit of \$462.50 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$183.88. No interest has accrued on the security deposit. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's claim has been allowed in part.

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: March 09, 2017

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Residential Tenancy Branch