



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF (Tenant's Application)  
                             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 she sought return of the security deposit and recover of the filing fee. In the Landlord's Application for Dispute Resolution he sought monetary compensation for damage to the rental unit authority to retain the security deposit and recovery of the filing fee.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and his Application on September 17, 2016 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 22, 2016 and I proceeded with the hearing in her absence.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

7.1 The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

7.3 If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant failed to attend the hearing to present her case, I dismiss her claims without leave to reapply.

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 Landlord's 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.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

#### Background and Evidence

The Landlord testified that this tenancy began July 1, 2011. Monthly rent was initially payable in the amount of \$1,100.00 and the Tenant paid a \$550.00 security deposit. The Landlord confirmed that when the tenancy ended monthly rent was \$1,130.00.

The Landlord testified that he informed the Tenant that he was thinking of selling the property in the spring of 2016. He further stated that initially the Tenant expressed an interest in purchasing the property, although when she informed him that she had found another place to live, he hired a realtor. He confirmed that he did not issue a 2 Month Notice to End Tenancy for Landlord's Use.

The Landlord testified that he informed the Tenant that if she found other accommodation he would agree to her moving from the rental unit without expecting the proper notice. He confirmed that that the Tenant gave notice to move out of the rental unit for the end of August 2016 and although the Tenant only gave 2 weeks' notice, he was agreeable to this as he intended to change the carpets and otherwise ready the property for sale. He confirmed that she moved some but not all of her items out and left a considerable amount of garbage. At that time he also discovered the significant damage to the rental including but not limited to:

- a broken countertop;
- a broken backsplash;
- significantly stained and damaged carpets;
- holes in the walls;
- damaged blinds;
- incomplete painting;
- a broken dining room table;
- broken and damaged cabinetry; and,
- garbage left by the Tenant.

In support of his application the Landlord provided several photos of the rental unit confirming the above damage done by the Tenant.

The Landlord stated that the rental unit was brand new when the tenancy began in 2011. Accordingly, the building elements were approximately five years old at the time the tenancy ended.

He further confirmed that the Tenant asked to borrow the Landlord's dining room table and television. At the end of the tenancy all of the chairs were broken and one of the legs on the dining room table was missing.

The Landlord also testified that the Tenants left a considerable amount of garbage including both animal and human feces and frozen tropical fish.

The Landlord further claimed that he did not receive the Tenant's forwarding address until she applied for dispute resolution.

The Landlord testified that he attended to most of the required repairs and was able to sell the rental unit by the second week of September 2016. He confirmed that the unit did not sell for the price he had hoped as further repairs were needed, and was sold for less than comparable units in the same building, but he simply wanted to put the rental unit behind him.

The Landlord confirmed that although his actual expenses to repair the rental unit exceeded \$5,000.00 he is only claiming \$2,483.51 which is the amount of his expenses less a depreciated cost. He provided a detailed table of these costs, as well as supporting receipts.

The Landlord confirmed he also sought recovery of the filing fee of \$100.00 and authority to retain the \$550.00 security deposit against any amounts awarded.

### Analysis

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 Landlord has 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 section 37 of the *Act* as follows:

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.

Based on the undisputed testimony and evidence before me, and on a balance of probabilities, I find the Landlord has met the burden of proving his claim that the Tenant significantly damaged the rental unit. The photos submitted by the Landlord confirm its condition as being damaged at the end of the tenancy.

I also find the Landlord has proven his related losses. I accept the Landlord's evidence that the rental unit was new at the time the tenancy began and that the cost to repair the damage caused by the Tenant exceeded the \$5,000.00 claimed on the Application for Dispute Resolution. The Landlord also provided receipts for the amounts spent to repair the damage which confirm this amount.

The Landlord confirmed he only wished to pursue compensation for \$2,483.51 which is an adjusted cost for the amounts claimed for repairing damage to the rental unit. I find this amount to be consistent with the amount which would have been awarded when considering *Policy Guideline 40—Useful Life of Building Elements*.

As the Landlord has been successful, I also award him recovery of the \$100.00 filing fee for a total award of **\$2,583.51**.

The Landlord is authorized pursuant to sections 38 and 72 to retain the Tenant's **\$550.00** security deposit and I grant him a Monetary Order for the balance due in the amount of **\$2,033.51**. The Landlord must serve this Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The Tenant failed to attend the hearing and her application is dismissed.

The Landlord is entitled to compensation in the amount of \$2,583.51 for the cost to repair damages caused by the Tenant and recovery of the filing fee. The Landlord may retain the Tenant's \$550.0 security deposit and is granted a Monetary Order for the balance due in the amount of **\$2,033.51**.

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 02, 2017

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Residential Tenancy Branch