



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Jonna Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

A hearing was convened on February 23, 2017 in response to cross applications.

On August 23, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 25, 2016 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On January 18, 2017 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, for the return of her security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and for "other".

The Tenant stated that on January 25, 2017 the Tenant's Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On August 25, 2016 the Landlord submitted 20 pages of evidence and 70 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant with the Application for Dispute Resolution. The Tenant stated that she received 20 pages of evidence and 67 photographs to the Residential Tenancy Branch.

The 20 pages of evidence that the Tenant acknowledged receiving from the Landlord were accepted as evidence for these proceedings.

The parties were advised that during the hearing I would ensure the Tenant had any photograph discussed during the hearing before it was considered as evidence. Prior to

the conclusion of the hearing on February 23, 2017 and in my interim decision of February 24, 2017 the Landlord was directed to submit a copy of all the photographs he has previously submitted in evidence and to sequentially number each of the photographs. Prior to the conclusion of the hearing on February 23, 2017 and in my interim decision of February 24, 2017 the Landlord was directed to submit a duplicate copy of those photographs to the Tenant.

On January 27, 2017 the Tenant submitted 3 booklets of evidence and one CD to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord on January 27, 2017. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The hearing on February 23, 2017 as there was insufficient time to conclude the hearing on that date. It was reconvened on April 06, 2017 and was concluded on that date.

On March 01, 2017 the Landlord submitted 62 photographs to the Residential Tenancy Branch. At the hearing on April 06, 2017 the Landlord stated that he served these photographs to the Tenant on March 01, 2017. The Tenant acknowledged receipt of the photographs and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?  
Should the security deposit be return to the Tenant or retained by the Landlord?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant's mother moved into a different rental unit in this residential complex many years ago;
- when the Tenant's mother first moved into her first rental unit a condition inspection report was completed;
- many years ago the Tenant's mother moved into this rental unit in the same residential complex;
- the Landlord did not complete a new condition inspection report when the mother moved into the second rental unit;
- the Tenant moved into the rental unit with her mother approximately three years prior to her mother passing away;
- when the Tenant's mother passed away in 2006 the Landlord and the Tenant verbally agreed that the Tenant could continue living in the rental unit;
- the Landlord did not complete a new condition inspection report when he agreed that the Tenant could remain living in the unit after her mother passed away;

- at the end of the tenancy the rent was \$768.00;
- rent was due by the first day of each month;
- a security deposit of \$304.11 was paid on May 30, 2006;
- the security deposit has not been returned;
- the Landlord does not have written authority to retain any portion of the security deposit;
- the rental unit was vacated on July 28, 2016; and
- the Landlord did not schedule a time to complete a final condition inspection report at the end of the tenancy.

The Landlord stated that he first tried to arrange a time to complete a condition inspection report with the Tenant in 2009 but she refused to participate. The Landlord stated that he was unable to schedule a time to complete a final condition inspection report because he did not receive a forwarding address for the Tenant until several days after the unit was vacated.

The Landlord stated that on July 22, 2016 an Order of Possession was posted on the door of the rental unit which declared that the Tenant must vacate the rental unit by July 24, 2016. The Tenant stated that a neighbour sent her a photograph of the Order of Possession, via text, on July 23, 2016.

The Tenant stated that she sent her forwarding address to the Landlord on August 10, 2016, via registered mail. The Landlord stated that he does not recall when he received the forwarding address, but he thinks it was a day or so after it was mailed.

The Landlord is seeking compensation, in the amount of \$1,400.00, for painting. The Landlord submitted an invoice for \$2,200.00, which included a charge of \$1,400.00 for painting the rental unit. The Landlord estimated that the rental unit was previously painted in 2006.

The Tenant questioned the validity of this invoice as she was unable to locate a business record of this company and there is no contact information for the company on the invoice. The Tenant noted that the invoice was dated August 01, 2016, which means the work was done on a civic holiday just two days after she vacated the unit.

The Landlord stated that the rental unit required painting because the Tenant smoked inside the rental unit and painting was required to eliminate the odour. He stated that it was a non-smoking building and she was told she was not allowed to smoke inside the unit when she moved into the unit.

The Tenant stated that she smoked on the deck but she did not smoke inside the rental unit.

The Witness for the Tenant, who is the Tenant's daughter, stated that her mother did not smoke inside the rental unit and that the unit did not smell of smoke.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution proceeding, during which smoking in the rental unit was discussed. Neither party was able to provide a file number for these proceedings but they both consented to me reviewing previous decisions prior to rendering a decision in this matter. I have reviewed a decision from a previous proceeding, dated July 22, 2016, and I could find nothing that is relevant to this claim for painting.

The Landlord is seeking compensation, in the amount of \$600.00, for cleaning. In the \$2,200.00 invoice the Landlord submitted there was an entry for \$800.00 for cleaning and repairing drywall. The Landlord stated that \$600.00 of this \$800.00 entry was for cleaning the rental.

The Landlord stated that numerous areas in the rental unit required cleaning, including the need to wash the walls prior to painting.

The Landlord submitted several photographs of the rental unit, which he stated were taken after the tenancy ended, that the Landlord contends represent the condition of the rental unit at the end of the tenancy. One of the photographs discussed during the hearing was a photograph of the side of a stove with a burner cover barely visible in the photograph, which shows the side of the stove needed cleaning. The Landlord stated that this photograph was taken shortly after the end of the tenancy. After the Tenant testified that she removed her burner covers at the end of the tenancy the Landlord stated that the stove toppers were left at the end of the tenancy.

The Tenant stated that she cleaned the stove prior to the end of the tenancy and that the photograph of the stove submitted by the Landlord did not reflect the condition of the stove at the end of the tenancy. She stated that she knows the photograph was taken prior to the end of the tenancy because she took her burner covers with her at the end of the tenancy.

The Tenant submitted a video recording that was taken by the Witness for the Tenant shortly before the rental unit was vacated. The stove is shown in the video, which clearly show there are no burner covers on the stove. After this issue was raised at the hearing the Landlord stated that most of the photographs were taken after the tenancy ended.

The Tenant stated that she cleaned the rental unit at the end of the tenancy and that the photographs the Landlord contends depict the condition of the rental unit at the end of the tenancy do not accurately reflect the condition of the unit at the end of the tenancy. She acknowledged that the photographs show that the rental unit needed cleaning but she stated that those photographs were likely taken when the rental unit was inspected several months before the end of the tenancy. The Tenant stated that the video she submitted in evidence accurately reflects the condition of the rental unit at the end of the tenancy.

The Landlord argued that there can be no doubt that photographs which do not depict furniture were obviously taken after the tenancy ended. I note that the vast majority of the Landlord's photographs are taken from a very close range, in which case furniture would not be visible.

The Agent for the Landlord stated that she was not an agent for the Landlord for the Landlord after this tenancy ended but she did view the rental unit at the end of the tenancy and she concluded that the rental unit was very dirty and needed a significant amount of cleaning.

The Witness for the Tenant stated that she helped clean the rental unit at the end of the tenancy and she believes the rental unit was left in immaculate condition, although she acknowledged an air conditioning unit may have required wiping. She stated that on July 28, 2016 she recorded the video that was submitted in evidence, which represents the condition of the rental unit at the end of the tenancy.

In response to a question from the Landlord the Witness for the Tenant stated that her comment regarding the need to vacuum that she makes during the recording of the video was in reference to her conclusion that there was no need to vacuum the rental unit for a second time.

In response to a question from the Landlord the Witness for the Tenant stated that the balcony was not cleaned again after the video was recorded.

The Landlord is seeking compensation, in the amount of \$200.00, for repairing drywall. In the \$2,200.00 invoice the Landlord submitted there was an entry for \$800.00 for cleaning and repairing drywall. The Landlord stated that \$200.00 of this \$800.00 entry was for cleaning the rental.

The Landlord stated that the drywall was damaged in a variety of areas. He stated that the most significant damage was the hole in the drywall between the bedroom closet and hall closet. The Landlord submitted a photograph of the hole, which he estimates was the size of a golf ball.

The Tenant stated that she does not recognize the damage to the wall that is depicted by the Landlord's photograph. She acknowledged there was a hole in the drywall between the bedroom closet and hall closet, which she estimates was less than an inch in diameter. She stated that she does not know if the hole was present at the start of her tenancy as there was a cabinet in front of that wall when she moved in that was not moved until she moved out of the rental unit.

The Witness for the Tenant stated that there was a hole in the closet, the size of a little finger, when the Tenant's mother was living in the rental unit. She stated that she noticed some minor damage to the drywall when the Tenant's mother was living in the rental unit but no additional damage occurred while the Tenant was living in the unit.

The Landlord is seeking compensation, in the amount of \$40.00, for replacing a missing shelf and clothes rod. He submitted photographs of the interior of a closet, which appears to be missing a shelf and rod. The Landlord stated that the shelf and rod were intact at the start of the tenancy.

The Tenant stated that when she moved into the unit with her mother had a shelving unit in that closet and it was used as a pantry. She stated that she does not know if there was a shelf and clothes rod in the closet when her mother moved into this unit.

The Landlord is seeking compensation, in the amount of \$3,078.48, for replacing the carpet in the living room and hallway and the linoleum in the kitchen and bathroom.

The Landlord estimated that the carpet was 9 or 10 years old. He stated that it was replaced after the mother moved into the rental unit, although he does not recall when it was replaced. The Tenant stated that the carpet was very old and that it was not replaced during her, or her mother's, tenancy.

The Landlord stated that that the carpets were stained and burned. He contends that the photographs submitted in evidence by the Landlord establish the condition of the carpets.

The Tenant stated that the carpets were not burned and stained. She stated that the Landlord's photographs do not accurately reflect the condition of the carpets at the end of the tenancy and she is not convinced that the photographs are images of the carpet in the rental unit.

The Tenant stated that the video evidence she submitted in evidence more accurately reflects the condition of the carpets at the end of the tenancy. The Landlord stated that the burns in the carpet can be seen in the video. The Tenant stated that the marks that can be seen in the video are simply dirt that dropped from a plant that was being moved.

The Landlord stated that there was a stain on the bathroom linoleum and several puncture marks on the kitchen linoleum. He stated that the mark on photograph 24 is a puncture mark and that photographs 1 and 2 depict the stain on the floor.

The Tenant stated that there were no puncture marks on the kitchen floor at the end of the tenancy. She stated that the stain on the bathroom floor has always been there, although it has grown over time. She speculates that the stain is caused by moisture from the toilet, which has always leaked a small amount.

### Analysis

Section 1 of the *Residential Tenancy Act (Act)* defines a tenancy agreement as an agreement, whether written or oral, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities,

and includes a licence to occupy a rental unit. As the Landlord permitted the Tenant to continue living in the rental unit after the Tenant's mother passed away and the Tenant continued to pay rent for the rental unit, I find that they entered into a verbal tenancy agreement sometime in 2006.

Section 23(1) of the *Act* stipulates that a landlord and a tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. In these circumstances I find that the parties should have inspected the unit on the day that the Tenant and the Landlord entered into a verbal tenancy agreement, at which point the Tenant was no longer living in the rental unit as a guest of her mother. On the basis of the undisputed evidence I find that the rental unit was not jointly inspected when these parties entered into their verbal tenancy agreement.

Section 23(3) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection required by section 23(1) of the *Act*. On the basis of the Landlord's testimony that he did not try to arrange an inspection of the rental unit until sometime in 2009, I find that the Landlord did not comply with section 23(3) of the *Act*.

Section 24(2)(a) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23(3) of the *Act*. As I have concluded that the Landlord did not comply with section 23(3) of the *Act*, I find that the Landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished.

On the basis of the undisputed evidence that the rental unit was vacated on July 28, 2016, I find that the tenancy ended on July 28, 2016, pursuant to section 44(1)(d) of the *Act*.

Section 35(1) of the *Act* stipulates that a landlord and a tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the tenant ceases to occupy the rental unit or on another mutually agreed day.

Section 35(2) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection required by section 35(1) of the *Act*. On the basis of the Landlord's testimony I find that he did not try to arrange a time for a final inspection of the rental unit.

I find that the Landlord's explanation that he could not schedule a time for a final inspection because the Tenant did not leave a forwarding address is inadequate. As the Tenant was occupying the rental unit when the Landlord posted the Order of Possession on the door of the rental unit on July 22, 2016, I find that the Landlord had ample opportunity to post notice of a final condition inspection report on that date.

Section 36(2)(a) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35(2) of the *Act*. As I have concluded that the Landlord did not comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property was extinguished a second time.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

Residential Tenancy Branch Policy Guideline 17, with which I concur, suggests that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file a monetary claim for damage to the rental unit. I therefore find it appropriate to consider the Landlord's claims for damage during these proceedings.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit needed painting because the Tenant smoked in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant smoked in the rental unit or that refutes the



testimony of the Tenant and her witness that she did not smoke in the rental unit. I specifically note that there was no evidence from anyone who observed the Tenant smoking in the rental unit nor was there evidence from an independent party, such as a professional painter, that would corroborate the claim that the Tenant smoked in the rental unit.

As the Landlord has failed to establish that the Tenant damaged the rental unit by smoking, I dismiss the Landlord's claim for painting.

Residential Tenancy Branch Policy Guideline 1, with which I concur, stipulates that an arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

On the basis of the video recording submitted in evidence I find that the rental unit was left in reasonably clean condition. I find that this recording is the best evidence of the condition of the rental unit at the end of the tenancy, as there can be little doubt it was taken at the end of the tenancy and it provides me with the ability to independently assess the condition of the unit at the end of the tenancy.

I find that the video recording is more reliable evidence of the condition of the rental unit at the end of the tenancy than the photographs submitted in evidence by the Landlord. In reaching this conclusion I was influenced by the Landlord's testimony that the photograph submitted that shows the side of the stove was taken at the end of the tenancy and that the Tenant left a burner cover on the stove at the end of the testimony. Given that the video recording shows there are no burner covers on the stove, I find that it is highly unlikely that the Landlord's photograph of the stove was taken at the end of the tenancy.

As the Landlord's testimony regarding the photograph of the stove lacks credibility, I find that all of the photographs submitted in evidence by the Landlord are of limited evidentiary value, as I cannot rely on his testimony that they were taken at the end of the tenancy. I therefore have placed no weight on the Landlord's photographs unless the photographs are consistent with the video evidence.

For example, I find that the fridge did need a small amount of additional cleaning as that is demonstrated by both the Landlord's photographs and the video recording. I am satisfied that the Landlord's photographs of the fridge were taken at the end of the tenancy, given that the fridge was empty when the photographs were taken. Given that the photographs provide more detailed images of the fridge, I find that they more accurately reflect the condition of the fridge at the end of the tenancy.

For example, I find that a broken mirror was left in the rental unit as that is demonstrated by both the Landlord's photographs and the video recording.

I am also willing to accept that the inside of a kitchen cabinet needed wiping on the basis of the Landlord's photographs. I am satisfied that this photograph was taken at the end of the tenancy, given that the cupboard was empty when the photograph was taken.

Regardless of the need for the aforementioned cleaning, I find that the rental unit was left in reasonably clean condition. I therefore dismiss the Landlord's claim for cleaning costs.

In adjudicating the claim for cleaning I have placed no weight on the comment in the video recording regarding there being no need to vacuum the rental unit for a second time. I find that the explanation provided for that comment by the Witness for the Tenant is consistent with the comment in the recording.

In adjudicating the claim for cleaning I have placed no weight on the Witness for the Tenant's testimony that the balcony was not cleaned after the video was recorded. In my view, the balcony is reasonably clean in the video and therefore no additional cleaning was required.

On the basis of the undisputed testimony I find that there was a hole in the wall between the hallway closet and the bedroom closet. On the basis of the Landlord's photograph I find that the hole in the drywall was large enough that it should not be considered normal wear and tear.

I find, however, that the Landlord has submitted insufficient evidence to establish that the closet wall was damaged during this tenancy. Similarly, I find that the Landlord has submitted insufficient evidence to establish any of the drywall that was damaged at the end of the tenancy was damaged during this tenancy. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord did not complete a condition inspection report prior to the beginning of this tenancy, which is intended to establish the condition of the rental unit at the start of each tenancy. I find it entirely possible that any damage to drywall occurred during the Tenant's mother's tenancy or that the damage occurred prior to the mother's tenancy, as there was no inspection report completed when the mother moved into this rental unit.

In concluding that there is insufficient evidence to establish that the hole between the closets did not occur during this tenancy, I was also influenced by the testimony of the Tenant who stated that she does not know if the hole was present at the start of her tenancy as there was a cabinet in front of that wall when she moved in.

In concluding that there is insufficient evidence to establish that the drywall was damaged during this tenancy, I was also influenced by the testimony of the Witness for the Tenant that she noticed some minor damage to the drywall when the Tenant's mother was living in the rental unit but no additional damage occurred while the Tenant was living in the unit.

As the Landlord has submitted insufficient evidence to establish that the drywall was damaged during the Tenant's tenancy, I am unable to conclude that the Tenant is obligated to repair the drywall. I therefore dismiss the claim for repairing the drywall.

I find that the Landlord has submitted insufficient evidence to establish that there was a shelf and clothes rod in the hall closet when the Tenant's tenancy began. In reaching this conclusion I was heavily influenced by the Tenant's testimony that when she moved into the rental unit her mother had a storage unit in this closet and the absence of testimony to refute that testimony. I therefore dismiss the claim for replacing the shelf and rod.

On the basis of the photographs submitted in evidence by the Landlord I find that there are some minor marks and stains on the carpet. I find that this evidence is the most reliable photographic evidence regarding the carpet as they were taken from a closer view than the video submitted in evidence by the Tenant.

Given that this carpet is at least nine years old I find that those marks and stains constitute normal wear and tear. I find that even if I concluded the marks and stains exceeded normal wear and tear, I would not find that the Tenant is responsible for repairing the damage as there is insufficient evidence to establish that this damage was not present at the start of the tenancy. I therefore dismiss the claim for replacing the carpet.

I find that the Landlord has submitted insufficient evidence to show that the kitchen floor has a puncture mark in it. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the floor had puncture marks or that refutes the Tenant's testimony that it was not punctured. I find that photographs 23 and 24 do not assist me in determining whether the floor was punctured, as the photographs do not clearly depict the alleged damage. As there is insufficient evidence to show the floor was damaged, I dismiss the claim for replacing the linoleum in the kitchen.

I find that the Landlord has submitted insufficient evidence to establish that the stain on the bathroom floor was not present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, to show that this damage did not exist prior to the start of this tenancy or to refute the Tenant's testimony that the stain has always been there. As there is insufficient evidence to show the floor was stained during the tenancy, I dismiss the claim for replacing the bathroom linoleum.

In the absence of a condition inspection report that was completed after the Landlord and the Tenant entered into a verbal tenancy agreement, it is difficult, if not impossible, for the Landlord to establish the condition of the rental unit when the Tenant's tenancy began. To be clear, the Tenant is not responsible for any damage that occurred to the rental unit prior to the Tenant's tenancy.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I dismiss the Application in its entirety, including the application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The Tenant has established a monetary claim, in the amount of \$608.22, which is double the security deposit, and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: April 07, 2017

---

Residential Tenancy Branch