



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, OPN, FF

### Introduction

The landlord applies for a monetary award for unpaid rent and utilities and for damages for the cleaning and repair of the rental unit..

The tenant passed away June 19, 2016, in the rental unit. His estate was represented by the Public Guardian and Trustee (the "PGT").

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The PGT admits to the claim for August and September unpaid rent in the amount of \$1863.08 but disputes all other claims.

### Issue(s) to be Decided

A tenant's obligation at the end of a tenancy is set out in s. 37(2) of the *Residential Tenancy Act* (the "Act"). It requires a tenant to leave the premises reasonably clean and undamaged but for reasonable wear and tear.

Does the relevant evidence presented during this hearing show on a balance of probabilities that the tenant or his personal representative failed to return the premises reasonably clean and free of damage but for reasonable wear and tear?

### Background and Evidence

The rental unit is a two bedroom basement suite in a duplex.

The landlord purchased her portion of the duplex in November 1992. She began renting the self contained basement suite to the tenant and his wife in February 1993. She has lived in the upper portion of the duplex throughout the tenancy.

At the time of the tenant's death the monthly rent was \$931.50, including a cable charge, due on the first of each month. The tenant's wife vacated the premises some time ago and he lived alone.

The landlord holds a \$392.50 security deposit, received in February 1993.

The landlord testifies that the suite was virtually new when this tenancy began, but for the appliances, which were her old ones.

In 2003 water damaged the suite and the kitchen flooring and cabinets were replaced and the room was painted.

The landlord testifies that the late tenant was a very poor housekeeper. Indeed, earlier in 2016, while the tenant was in hospital, she obtained his permission to enter the suite and found it in a very un-kept state, with adult diapers and open food strewn about. She gave the tenant a formal letter dated May 19, 2016 requesting that he clean the suite up.

It would appear that the tenant continued to be in very poor health for the remaining month of his life and never did clean the suite.

Representatives of the PGT attended at the suite in August to remove items of value. They did not undertake a suite cleaning.

Ms. R. provided photographs of the suite showing piles of items on the floor, a very dirty carpet in the living room, bedroom and hallway, a bathtub with a rust mark and what appears to be either a dirty anti-slip matt in the tub or dirt from where the matt had been removed. The photos show a bathroom sink in very dirty condition and a kitchen floor also very dirty. The microwave shelf and counter are not clean.

Mr. B.A., counsel for the PGT submits that there is no evidence of intentional damage. It is his view that the landlord's photos show only reasonable wear and tear and that the items the landlord seeks recovery for are all older than the useful life as set out in Residential Tenancy Policy Guideline 40, "Useful Life of Building Elements."

He notes that the PGT entered the suite in July and removed the late tenant's mattress and garbage.

The landlord disputes that any garbage, in the form of low-value belongings, was removed.

### Analysis

In a civil proceeding against a deceased defendant, proof should be examined with the most careful scrutiny and indeed at the outset with some suspicion (*Egger v. Dessureault*, 2010 BCSC 88, and cases cited therein).

Section 75 of the *Act* provides;

- 75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be
- (a) necessary and appropriate, and
  - (b) relevant to the dispute resolution proceeding.

In my view, in most cases caution should be exercised, not in the admitting of evidence, but in the weighing of it, because the deceased cannot, of course, appear at the hearing and present his or her side of the argument.

The landlord has submitted the required Monetary Order Worksheet summarizing her monetary claim. It serves as a useful template for this analysis.

#### #1 and #2 Rent

This claim is acknowledged. I award the landlord \$1863.08 for August and September 2017 rent.

#### #3 and #4 Shaw Cable

This charge was subsumed in and included with the rent claim as a utility added to the rent of \$898.00.

#### #5 Rent Loss During Repair

I dismiss this item of the claim. The landlord had control of the suite by late August and had possession and control of it for September. It was not explained why more time was required to clean or conduct work in the suite.

#### #6 Rebuilt Kitchen

The landlord has an estimate of \$3000.00 to replace the kitchen cabinets. It appears she has spent \$3269.07 to purchase kitchen cabinets from IKEA at the end of October 2016. The landlord has failed to show that the kitchen cabinets required replacement. Though she provided photos of the interior of the rental unit, taken in September, there is no proof that the cabinets were damaged. I dismiss this item of the claim.

#### #7 Flooring

At the end of this tenancy the carpeting in the suite was twenty three years old. That is well beyond its useable life as stated in Guideline 40 (above). The landlord testified that she had the same carpet installed at the same time in her suite. She presented a photo showing it to still be in very good condition. Nevertheless, the carpet in the rental suite has doubled its useful life as set by the Guideline. To award the landlord the cost of replacing it would be to put her in a better position than had tenant taken reasonable care of the carpet in his suite.

I must dismiss the landlord's claim for the cost of re-carpeting.

The landlord's photos show the kitchen linoleum to be very dirty. There is no observable damage to the linoleum. It was new in 2003. It was thirteen years old at the end of this tenancy. Guideline 40 provides that linoleum ("tile") has a useful life of ten years. As set out above, to award the landlord the cost of replacing the linoleum would create a betterment.

She was entitled to a reasonably clean suite at the end of this tenancy and is entitled to the cost of cleaning the linoleum whether or not that work was done. Having regard to the photographic evidence, I consider eight hours would be needed to clean the kitchen floor. I award the landlord \$240.00 for the cleaning cost of the kitchen floor.

#### #8 Repair Damaged Walls

The landlord has not provided evidence that the walls were damaged. In any event, Guideline 40 places a twenty year life on drywall walls and these walls were older than that. I dismiss this item of the claim.

#### #9 Initial Cleaning

I have no hesitation in awarding the landlord her modest claim of \$200.00 for initial cleaning "in order to breathe in the suite."

#10 Replace Bathroom Fixtures and Cabinet.

In support of this claim the landlord presented photos of the tub and sink. The tub shows a rust spot. It is a metal tub and rust such as this is inevitable as reasonable wear and tear over the twenty three years or more of this tub's life. In any event, Guideline 40 gives a useful life of twenty years for such items.

The photo of the bathroom sink does not show damage. The sink needs significant cleaning. I do not consider the bathroom cleaning as part of the landlord's "initial cleaning in order to breathe in the suite." She is entitled to the cost of cleaning the sink and I award her \$120.00 in that regard.

Conclusion

The landlord is entitled to a monetary award totalling \$2423.08 plus recovery of the \$100.00 filing fee. I authorize her to retain the \$392.50 security deposit plus interest of \$97.87, a total of \$490.37, in reduction of the award. The landlord will have a monetary order for the remainder of \$2032.71.

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: April 01, 2017

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Residential Tenancy Branch