



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover loss of revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Only the landlord appeared in the conference call hearing. I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing, as well as the landlord's evidence, all by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided evidence of the registered mail service with tracking number and indicating the registered mail was received by the tenant. The landlord testified they sent to the tenant all of the evidence submitted to this proceeding.

The landlord was given full opportunity to be heard, to present evidence and to make submissions. The hearing proceeded on the merits of the landlord's original un-amended application and their evidence. I have reviewed all oral, written and document 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.

**Issue(s) to be Decided**

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed?

**Background and Evidence**

The following is undisputed. I have benefit of the written tenancy agreement stating the tenancy began November 01, 2013 for a fixed term of the tenancy ending October 31, 2016. The tenant vacated September 30, 2016. Rent in the amount of \$2600.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum amount of \$2300.00 which the landlord retains in trust. The evidence is that the parties did not agree as to the administration of the deposits at the end of the tenancy.

The landlord testified they and the tenant conducted a mutual inspection of the unit at the start of the tenancy and a mutual move out inspection of the unit at the end of the tenancy. The landlord provided a copy of the condition inspection report (CIR) signed by both parties on September 28, 2016. The landlord testified that the rental house was new and previously not occupied when the tenant took possession in 2013. It is relevant that the tenant wrote into the CIR they agreed with the landlord's claim respecting carpet stains and paint "dings", as well as leaving a, "mirrored wall to avoid further damage". The tenant also stated that the "dishwasher and cabinets were always like that" – *all as written*.

The landlord makes the following monetary claims on application as provided in their Monetary Order Worksheet dated October 03, 2016.

Carpet removal, labour and carpet - re damage	\$4614.51
Loss of revenue for October to November 15, 2016	\$2900.00
Fridge door (left of pair) – re damage	\$574.45
Cleaning, blind, sills, walls, cabinet	\$546.00
Blind – downstairs – quote – re damage	\$700.35
Cutting grass and weeding – re damage	\$120.00
Carpet cleaning and analysis x 2	\$158.50
Replace 9 light bulbs, fire alarm batteries - landlord	\$185.55
Repair 2 doors hinges. Dishwasher, fridge kickboard – re damage	\$347.77
Remove glass/mirror panels on walls, repair walls and paint	\$1000.00

The landlord provided a series of photo images in support of their claims as well as some invoices, receipts and estimates in further support.

The landlord testified they did not receive notice to vacate from the tenant in accordance with the Act. However the landlord testified they accepted the tenant was vacating prior to the end of the fixed term and immediately advertised the unit once notified. The landlord seeks loss of revenue associated with the non-compliant notice to end the tenancy to the date they claim they re-rented the unit, November 15, 2016.

The landlord claims they attempted to mitigate the carpet stain damage by professional cleaning on 2 occasions however it failed to successfully remedy the damage to the 3 year old carpeting, which they replaced. The landlord provided an invoice for the carpet replacement in the unmitigated amount of \$4614.51.

The landlord also seeks compensation for damage to one of the refrigerator 'French doors' which the landlord claims the tenant dented. The landlord provided an estimate for the part to repair the door in the unmitigated amount of \$347.10 plus tax. The landlord's quote states labour to install the door to be "up to \$200.00". The landlord provided photo images for the damage which they claim having repaired.

The landlord claims the rental unit was left with unclean walls, a dirty stove, staining

inside a cabinet and dirty sills and blinds. The landlord provided an invoice for the cleaning in the amount of \$546.00, as well as photo images.

The landlord claims for cutting the grass and weeding which they provide was the responsibility of the tenant. The landlord claims they paid \$120.00 cash for its remedy. The landlord provided photo images of the claimed lack of attention to the yard maintenance however did not provide a receipt in support of their monetary claim.

The landlord provided a photo image of a window blind claimed to have been damaged by the tenant. The photo image depicts warped vanes in the lower area of the blind. The landlord did not know how the warping occurred, other that it may have been by heat. The landlord did not know of the blind's construction or how it encountered it's appearance: only that it occurred during the tenancy. They provided a hand written description of a replacement blind they claim to be a quote from Home Depot in the unmitigated amount of \$700.35 inclusive of \$295.00 for installation.

The landlord claims \$185.85 for replacement of 9 light bulbs and fire alarm batteries which the landlord testified they replaced themselves. In support of this claim the landlord provided an invoice from a locksmith for a *double side deadbolt, service call and minimum labour* charges totalling the requested amount of \$185.85. The landlord did not provide a receipt for light bulbs or alarm batteries nor was the basis for the claim, or a claim for locksmith services, reflected in the CIR or supported by photo images.

The landlord claims for an array of repairs to cabinetry, fixing the placement of the dishwasher, and a broken basement door handle, and replacement of an air vent cover for which they provided some photo images and a receipt in the amount of \$347.77.

The landlord provided photo images and the CIR, as well as an invoice for the removal of the mirror panels on the walls and the resulting repairs to the walls including painting in the invoice amount of \$1000.00.

## **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant) .*

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

On preponderance of the evidence before me, I find that while the Act requires tenants to give one full month's notice that they are vacating, or that they may not give notice to vacate effective before the end of a fixed term period, the Act does not automatically entitle the landlord to compensation in the event of such breaches. There is no provision in the Act whereby tenants who fail to give adequate notice or improper notice will be automatically held liable for loss of income for the month following the month in which they breach occurs. However, **Section 7** of the Act does provide as follows in respect to *this above claim and all of the landlord's claims* for monetary losses and for damage made herein:

### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss stemming directly from a breach of the agreement or contravention of the *Act* by the tenant. Once established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed. If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs with possible allowance for loss of rent or loss of occupation during repairs, or replacement (less depreciation), whichever is less. The onus is on the landlord to prove expenditure is reasonable under the circumstances or on the tenant to show that the expenditure is unreasonable.

In respect to the landlord's claim for loss of revenue, while I accept the landlord's argument the tenant did not provide notice in concert with the *Act* the landlord was obligated to provide evidence of their reasonable efforts to mitigate their loss pursuant to Section 7(2) as stated above. In the absence of such evidence I find the landlord's claim of loss of rent revenue for the following 7 weeks following the end of the tenancy is not supported by sufficient evidence in satisfaction with the test established by Section 7 of the *Act*. As a result the landlord's claim for loss of revenue generally must fail. None the less, I accept the landlord's evidence and testimony that a period of time followed the tenant's departure before the landlord completed remedy of various deficiencies of the unit due to the tenant's conduct, principally replacement of the carpeting. As a result, I grant the landlord one half month's rent as nominal compensation in the amount of **\$1300.00** representing loss of revenue.

In respect to the landlord's claim for replacement of carpeting I accept the evidence supports the landlord's claim the tenant's conduct resulted in damage to the carpeting, and I am satisfied the landlord attempted to mitigate their loss by first contracting for cleaning of the carpeting. As a result I grant the landlord their claim for carpet cleaning in the amount of **\$158.50**. In respect to the replacement cost for the carpeting I find that **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – FINISHES** states the useful life for carpeting as 10 years. As a result I grant the landlord the

mitigated value of their claim in compensation in the amount of their claim multiplied by the remaining useful life of the carpeting of 7 years, in the mitigated amount of **\$3230.16** ( $\$4614.51 \times .70 = \$3230.16$ ).

I find the landlord is owed for the replacement cost of the damaged French door in the mitigated amount reflecting **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – FURNISHINGS** which states the useful life of a refrigerator as 15 years. As a result I grant the landlord the mitigated value of their claim as compensation in the amount of their claim for parts plus tax multiplied by the remaining useful life of the refrigerator of 12 years, in the mitigated amount of **\$291.27** ( $\$347.10 \times 1.05 = \$364.45$ )  $\times 12/15 = \$291.27$ ). I have not been provided evidence verifying the landlord expended the claimed amount for the installation of the refrigerator door therefore I dismiss this portion of the landlord's claim.

I find the landlord has largely met the test respecting their claim for cleaning. As a result I grant the landlord their claim in this regard in the amount of **\$546.00**.

In the absence of a receipt I find the landlord has not provided sufficient evidence to support their claim of \$120.00 for yard maintenance. However, I accept the landlord's photo image the condition of the exterior grounds appears to have lacked maintenance. As a result, I grant the landlord nominal compensation in the amount of **\$25.00**.

In respect of the claimed damage to a blind I find that in the absence of sufficient evidence respecting how the claimed damage may have occurred; and, in the absence of reference to it being damaged in the CIR, I find the landlord has failed to prove the tenant solely responsible for the blind's appearance, or that the blind was deemed lacking or damaged during the move out condition inspection. As a result, I must dismiss this portion of the landlord's claim. It must be known that even if I were to have accepted the tenant responsible for damaging the blind I find the landlord did not provide sufficient evidence verifying the amount claimed in concert with the test of Section 7 of the Act.

I find the landlord has not provided sufficient evidence supporting replacement of 9 light bulbs and fire alarm batteries. What evidence they provided in respect to this portion of their claim does not make sense. As a result this portion of their claim on application is dismissed.

I find the landlord has provided sufficient evidence supporting their claim for repairs to cabinetry, the dishwasher's placement, and other repairs in the amount of **\$347.77**, which I grant to the landlord.

I find the landlord has largely met the test respecting their claim for remediation to the walls following the tenant's placement of mirror tiles. As a result I grant the landlord their claim in this regard in the amount of **\$1000.00**.

As the landlord was in part successful in their application they are entitled to recover their filing fee. The security and pet damage deposit will be offset from the award made herein. *Calculation for Monetary Order is as follows:*

Carpet removal, labour and carpet - re damage	\$3230.16
Loss of revenue for October to November 15, 2016	\$1300.00
Fridge door (left of pair) – re damage	\$291.27
Cleaning, blind, sills, walls, cabinet	\$546.00
Cutting grass and weeding – re damage	\$25.00
Carpet cleaning and analysis x 2	\$158.50
Repair 2 doors hinges. Dishwasher, fridge kickboard – re damage	\$347.77
Remove glass/mirror panels on walls, repair walls and paint	\$1000.00
Filing fee	\$100.00
landlord's monetary award total	<b>\$6998.70</b>
<i>Minus tenant's deposits held in trust</i>	<i>-\$2300.00</i>
<b>Monetary Order / landlord</b>	<b>\$4698.70</b>

**I ORDER** the landlord may retain the security and pet damage deposits totalling \$2300.00 in partial satisfaction of their award, and **I grant** the landlord a **Monetary Order** pursuant to Section 67 of the Act for the balance of the award in the amount of



**\$4698.70.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The landlord's application, in relevant part, has been **granted** and the balance **dismissed**.

**This Decision is final and binding.**

*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 10, 2017

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Residential Tenancy Branch