



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, SS, FF

### Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenants for repairs and cleaning of the rental unit, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on August 16, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

At the outset of the hearing the Tenant, J.M., claimed he did not receive all of the Landlord's evidence. By decision dated March 20, 2017 the Landlord was granted authority to serve the Tenants by email. The Landlords agent, M.C., testified that the Tenants were served by email on March 20, 2017. I find the Tenants were served in accordance with the Order made March 20, 2017 and I proceeded with the hearing.

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 respective 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 Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord's agent testified that the tenancy began February 15, 2015. Monthly rent was initially payable in the amount of \$1,250.00 and was raised to \$1,286.00. The Tenants paid a security deposit in the amount of \$625.00.

The Landlord's agent stated that the tenancy ended on February 28, 2017. The Landlord applied for dispute resolution on March 14, 2017.

The Landlord's agent confirmed that the Landlord sought the sum of \$603.75 for repairs, cleaning and carpet cleaning. A copy of the related invoice dated March 24, 2017 was also provided in evidence.

The Landlord's agent was not able to testify as to when the rental unit was last painted.

Introduced in evidence was a copy of email communication between the parties wherein the Landlord's rental manager, J.F., wrote that there was "damage" to the drywall as well as stains on the carpet.

A copy of the move in and move out condition inspection report was provided in evidence and confirmed that carpet stains existed at the start of the tenancy. The move out report also indicated the walls were scuffed, yet there was no mention of "damage". The Landlord's agent confirmed that she did not complete the move out inspection and could not speak to why the alleged damage was not noted. The Landlord's agent confirmed that the move out inspection also failed to note that cleaning was required.

In response to the Landlord's submissions, the Tenant J.M. testified as follows.

He stated that they did not have the carpets professionally cleaned when they moved out. He also confirmed that the invoice was for removing a stain, which was noted on the move in as existing when the tenancy began.

J.M. further testified that the drywall was not damaged and that the walls were merely scuffed as noted on the move out condition inspection report.

J.M. stated that when they completed the move out condition inspection, the manager stated that the rental unit was in excellent condition and that they would receive their full deposit. He further stated that he feels the Landlord is now attempting to charge the upgrades and maintenance to them.

### Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I find the Landlord has failed to prove that the painting, cleaning and carpet cleaning were required due to the actions or neglect of the Tenants.

Section 21 of the *Residential Tenancy Act Regulation* provides as follows:

**Evidentiary weight of a condition inspection report**

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move out condition inspection report makes no mention of damage to the walls. Nor does it indicate the rental unit was left in a condition such that further cleaning was required. Further, the carpet was noted as stained when the tenancy began such that it is possible the stain removal required at the end of the tenancy was merely to address the stains which existed at the beginning.

The Landlord failed to submit evidence which would disrupt the evidentiary weight of the condition inspection report and based on the condition inspection report filed in evidence, I find the Landlord has failed to prove the cleaning and repairs costs were necessitated by the Tenants' actions or neglect.

Further, I note that *Residential Tenancy Policy Guideline 40* provides that interior paint has a useful building life of four years. The Landlord's agent was not able to provide evidence as to

the age of the paint; consequently, it is possible the rental unit required painting in any event of the tenancy due to the passage of time.

Conclusion

The Landlord's claim for compensation for repairs and cleaning of the rental unit is dismissed.

Having dismissed their claim for compensation I also dismiss the Landlord's claim to retain the security deposit and recover the filing fee.

The Landlord must return the Tenant's security deposit of \$625.00. The Tenants are granted a monetary order in the amount of \$625.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: August 16, 2017

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Residential Tenancy Branch