



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing convened as a result of Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenant, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on August 21, 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

### Preliminary Matter

The Landlord, M.K., confirmed that his middle name had been incorrectly spelled on the Landlords' Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the application to correctly spell M.K.'s middle name.

### Issues to be Decided

1. Are the Landlords 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

S.K. testified on behalf of the Landlords as follows. She stated that the tenancy began May 1, 2015. Monthly rent was payable in the amount of \$1,850.00 and the Tenant paid a \$925.00 security deposit.

A copy of the move in inspection report dated April 30, 2015 was provided in the materials. On the report the Landlords alleged the Tenant failed to participate in the move out inspection. Copies of text communication between the parties indicates the Landlords attempted to schedule a move out inspection with the Tenant.

A copy of the Tenant's Notice to End Tenancy was introduced in evidence and indicated the Tenant ended his tenancy effective February 28, 2017.

The Landlords submitted a Monetary Orders Worksheet in evidence and which indicated the Landlords sought compensation for the following:

cost of carpet cleaning	\$160.00
cleaning of rental unit	\$360.00
repair of walls and repainting	\$1,800.00
repair of wood floors	\$600.00
repair of ceiling	\$1,200.00
refinishing of cabinets	\$600.00
loss of one month's rent	\$1,850.00
total	\$6,840.00

S.K. confirmed that they paid the cost to have the carpets cleaned as the Tenant failed to do so.

She further confirmed that they paid \$360.00 to have the unit cleaned as the Tenant failed to clean the rental unit as required. The Landlords submitted photos of the rental unit in evidence showing its condition on move out. They did not submit proof of payment of the \$360.00.

S.K. further testified that they also paid to have the ceiling repaired which they claimed was due to the Tenant's neglect; she stated that the washing machine had been leaking for some time and had leaked into the ceiling and the den causing significant damage to the drywall. She claimed the Tenant did not inform them about the water leak, but that he was obviously aware of the leaking as he had towels around the machine to control the water.

The Landlords also sought the repair costs related to the walls, floors and cabinets. At the hearing S.K. confirmed that they did not pay to have the walls repaired and repainted, nor did they repair the wood floors or the cabinets; she stated rather that they accepted \$5,000.00 off the price of the home when they sold the rental home due to its condition. The Landlords failed to provide any documentation to support this claim.

S.K. testified that the walls had been repainted three years before the tenancy began such that when the tenancy ended the paint was approximately five years old.

S.K. also stated that the wood flooring and the cabinets were installed in 2008 such that when the tenancy ended they were approximately nine years old.

The Landlords also sought compensation for a loss of a months' rental income. S.K. stated that they had a professional come in and assess the damage to the ceiling, but the Tenant did not want the repairs to occur while he and his family were living in the rental unit and as such they had to wait until the tenancy ended to repair the ceiling, which in turn affected their ability to re-rent the unit. She also claimed that the buyers wanted to close the deal sooner, but expected the ceiling to be repaired.

The Landlord stated that the closing date on the sale of the home was May 1, 2017.

In response to the Landlord's claim the Tenant testified as follows.

He confirmed that he did not clean the carpets when he moved out. He stated that he did, however, clean the rental unit when he moved out. He then stated that he cleaned as best as he could but the house was very old. He confirmed that his children damaged the walls by drawing on them with crayons. He also claimed that the photos submitted by the Landlord were taken before the tenancy began, not when it ended.

In response to the Landlord's claim for \$5,000.00 representing the reduction in price they received for the sale of the home, the Tenant said that he disagreed with this request. He stated that he did agree, to some extent, to the Landlord's claim for

compensation to repair and repaint the walls, as he agrees this is his responsibility, however, he disagreed with the \$1,800.00 claimed as the wall damage was only on a few walls, not everywhere.

In response to the Landlord's claim for compensation for a loss of one month's rent the Tenant stated he felt that he was pushed out of the rental unit

The Advocate submitted as follows.

She stated that the Tenant acknowledged that carpet cleaning is the Tenant's responsibility, however, she noted that the amount on the Monetary Worksheet is \$160.00, yet the receipt is for the sum of \$134.00.

In terms of cleaning, the Advocate submitted that the Landlord failed to submit a receipt in evidence to support this amount. The Advocate stated that there was cleaning required, but the amount claimed is not supported by the evidence nor does the Tenant believe it is reasonable.

In terms of the wall repairs and painting, the Advocate noted that there is an undated quote in the evidence, which may or may not relate to the condition of the rental at the time the tenancy ended. She also noted this work was not in fact done by the Landlords.

In terms of the ceiling repair, the Advocate submitted that the Tenant informed the Landlord of the washing machine and repairs were conducted to address this at the time. In support the Tenant submitted text messages between the parties which showed that in late January 2017 they communicated about these arrangements. As such, she argued that the Landlord's claim that the Tenant did not inform them is not correct.

The Advocate submitted that the Landlords have not met the burden of proving their monetary claim. She stated that until they testified she did not know that they were going to claim that the property sold for \$5,000.00 less due to the alleged condition of the rental unit, and that in any case they failed to provide any evidence to support this.

In response to the Landlord's claim for a loss of rent for one month, the Advocate submitted that the Tenant gave notice to end his tenancy on January 23, 2017 and as such gave more than a months' notice (the effective date was February 28, 2017). She further stated that the Landlords' informed the Tenant that they intended to leave the

rental unit vacant as they had it up for sale and had no intention of getting any new renters.

In reply the Landlord confirmed she did not submit a receipt for the cost of the cleaning and stated that she expected me to come to a reasonable amount for the cost of cleaning.

The Landlord said they didn't have time to repair the damage in time for the rental property to sell so they reduced the price by \$5,000.00.

### 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.

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.

The Tenant conceded that he did not have the carpets cleaned at the end of the tenancy. *Residential Tenancy Policy Guideline 1* provides that Tenants must have carpets cleaned after a tenancy of more than one year. The Tenant's Advocate did not dispute this point. I therefore award the Landlords the **\$134.00** amount noted on the receipt for the cleaning.

The photos of the rental unit confirm that the Tenant did not clean as required. However, I agree with the Tenant's Advocate that the Landlords failed to prove their loss of \$360.00 for related cleaning as they failed to submit a receipt for this claim. I therefore award the Landlords the nominal sum of **\$200.00** as the cost of cleaning the rental unit.

The Tenant also conceded that he was responsible for some of the painting of the rental unit. The photos submitted in evidence by the Landlords show the walls as being damaged, as well as covered in crayon and other unknown substances. *Residential Tenancy Policy Guideline 40* provides that interior paint has a useful life of four years; as the paint in the rental unit was at least five years old at the time the tenancy ended, it is likely that the rental unit would have required painting in any event of the Tenant's actions. As noted earlier in this my Decision, the Landlords did not incur the cost to repair or repaint the walls.

The Landlords submitted that the cost to repair the hard wood flooring was estimated to be \$600.00 and the cost to repair the cabinets was also \$600.00. Again, these costs were not incurred by the Landlords as the work was not completed prior to the sale of the rental property.

The Landlords claim they reduced the sale price of the rental property by the sum of \$5,000.00 due to the condition it was left by the Tenants. They failed to provide any documentation relating to the sale, and more importantly, failed to submit any evidence which would support their claim that they accepted a reduced price due to the condition of the walls, floor and cabinets. I am therefore unable, based on the evidence before me, to find that the Landlords suffered a loss of \$5,000.00 as a consequence of the condition in which the rental unit was left at the end of the tenancy. As well, it is notable that the estimated cost for repairing the walls, flooring and cabinets was only \$3,000.00. This figure does not take into consideration the fact the values would be reduced based on the building elements useful life according to *Policy Guideline 40*. In all the circumstances, I find the Landlords have failed to meet the burden of proving this portion of their claim.

I am also unable to find, based on the evidence before me, that the Tenant is responsible for the cost to repair the ceiling damage. The text communication between the parties confirms the Tenant informed the Landlords of the water leak as early as January 2017. It is unclear how long the washing machine was leaking, or when the Tenant became aware of the leak, and I am therefore unable to find the damage was caused by the Tenant's actions or inaction. As well, had the Landlords wished to repair this damage sooner, they could have issued a Notice of Entry pursuant to section 29 of the *Act*. For these reasons I dismiss the Landlords' claim for related compensation.

I agree with the Tenants' Advocate that it was unlikely the Landlords would have rented the rental unit to a subsequent tenant given that the Tenant vacated the tenancy on February 28, 2017 and the closing date on the rental unit was May 1, 2017. Further, the Landlords failed to submit any evidence to show that they attempted to re-rent the unit, and therefore minimize their losses. For these reasons I dismiss their claim for a loss of one months' rent.

Having only been partially successful, I decline the Landlords' request that I award them recovery of the filing fee.

### Conclusion

The Landlords are entitled to monetary compensation in the amount of **\$334.00** representing compensation for the cost to clean the carpets and a nominal sum for cleaning the rental unit. The balance of the Landlords' claims is dismissed.

Neither party made any submissions regarding the extinguishment provisions of the *Act* as it relates to the conduct of a condition inspection and the security deposit; accordingly, I make no findings in this regard.

The Landlords are authorized to retain the sum of **\$334.00** from the Tenant's \$925.00 security deposit. The balance of the security deposit in the amount of **\$591.00** shall be returned to the Tenant. In furtherance of this Order, I grant the Tenant a Monetary order in the amount of **\$591.00**; the Tenant must serve the Order on the Landlords and may file and enforce the Order 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 21, 2017

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Residential Tenancy Branch