



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MND, MNR, MNSD, MNDC, OPM, FF

### **Introduction**

This hearing was convened in response to an application by the landlord made May 08, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid rent, and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposits of the tenancy in partial satisfaction of the monetary claim. The landlord further originally applied for an Order of Possession pursuant to a Mutual Agreement to End the Tenancy however the proceeding was informed the tenant had vacated prior to filing of the application and the landlord already regaining *de facto* possession. Therefore this portion of the application is preliminarily dismissed.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of rescheduled hearing by *registered mail* sent to their forwarding address, in accordance with Section 89 of the Act, the tenant did not participate in the conference call hearing. The landlord testified providing the tenant with all of the evidence provided to this proceeding by registered mail for which they submitted proof of registered mail service. I accept the landlord's mail tracking information as proof the tenant received the landlord's amended claim 13 days before the hearing. Given I have found the tenant was aware of this hearing and the case against them, and given the limited nature of the landlord's monetary amendment I find

pursuant to Section 71(2)(b) of the Act that the amendment has been sufficiently served for the purposes of the Act on October 11, 2017. The hearing proceeded on the merits of the landlord's claims. The landlord was given full opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing the landlord acknowledged having presented all of the relevant evidence they wished to present.

*I have reviewed all oral, written and document evidence before me. However, only the evidence relevant to the application and the issues and findings in this matter are described in this Decision.*

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy began May 15, 2016 and has since ended. I have benefit of a copy of the tenancy agreement stating a fixed term end date of May 31, 2017. Rent in the amount of \$900.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00 which the landlord retains in trust. The tenancy ended April 30, 2017 when the tenant vacated in accordance with the parties' Mutual Agreement to End a Tenancy executed by both parties on April 07, 2017, of which I have benefit of a copy.

The landlord testified they conducted a mutual inspection of the unit at the start of the tenancy. The landlord provided into evidence the Condition Inspection Report (CIR) indicating both parties agreed the report fairly represented the condition of the unit at the start of the tenancy. The CIR further states the parties conducted a mutual move out inspection on May 01, 2017 with the tenant and landlord signing the CIR. The landlord testified the tenant did not agree the report fairly represented the condition of the unit at the end of the tenancy, however signed the security deposit reconciliation

statement in agreement with solely a deduction of \$78.75 for carpet cleaning, and further provided their forwarding address.

The landlord's claim per their Monetary Order Worksheet is as follows.

owed rent (May = \$900.00, June 2017 = \$450.00)	\$1350.00
liquidated damages	\$625.00
carpet cleaning	\$78.75
cleaning	\$280.00
painting	\$1342.45
mailbox rekeying	\$99.75
garage remote replacement	\$43.68
filing fee	\$100.00
Monetary claim on application	\$3919.63

The landlord claims the tenant left the unit unclean. They identified this portion of their claim in the CIR indicating a number of areas of the unit as "dirty" and noting that a "major clean was needed" under Part V of the CIR. The landlord further testified about the unclean condition of the unit, and as well provided a series of photo images depicting an unclean stove range oven and with burner wells the landlord identified were utilized as ashtrays. The refrigerator interior was depicted with varying debris and discolouration and the interiors of cabinetry containing varying deposits and residual minutia. The landlord claims that smoking inside the unit caused discolouration of the walls although this aspect is not clearly discernable in the photo images. The landlord claims \$280.00 for cleaning for which they provided an invoice dated May 05, 2017.

The landlord testified the tenant did not return the mailbox key and the garage remote, for which they provided invoices for their replacements in the sum of \$143.43. The landlord testified and provided evidence they again rented the unit starting in mid-June 2017 however did not testify as to why the invoices for these access devices were each dated mid-July 2017. None the less the landlord highlighted these items in the CIR as requiring replacement.

The landlord claims the rental unit required entire repainting of the *1 bedroom condo*, attributable to the conduct of the tenant during this tenancy. Their testimony is that the rental unit was entirely painted 11 months earlier at the start of the tenancy, at the respondent tenant's 'request for patch and paint'. The landlord testified that at the start of the tenancy the condition of the rental unit was, *actually*, contrary to that stated within the CIR which indicates that at the start of the tenancy the rental unit walls, ceilings and some window sills with "gouges", "dents", "dings" and "scuffs". The landlord testified that they would not rent out a unit unless it was in appropriate repair and newly painted as evidence of the true condition of the unit at the start of the tenancy. The CIR indicates that at the end of the tenancy these same areas were, "same plus dirty". The landlord testified their photo images depict deficiencies of the rental unit surfaces caused by smoking inside the unit so as to warrant an entire repainting of the unit which the landlord provided required considerable time. The landlord submitted an invoice for painting in the amount of \$1342.45.

The balance of the landlord's claim, in part, represents the landlord's determination the tenant owes rent for May 2017 and the first half of June 2017 in the sum of \$1350.00. The landlord explained the unit required cleaning and repainting due to the fault of the tenant and could not again be rented until almost 7 weeks later on June 12, 2017. The landlord also explained the tenant was responsible under the fixed term agreement for rent to the end of the fixed term and that an additional half month's rent represents time needed to remedy the condition of the unit upon its vacancy.

The landlord also is claiming the tenant is responsible to satisfy the *Liquidated Damages* clause amount of \$625.00 reflected in the tenancy agreement, "*for breach of a material term of the tenancy agreement, causing (them) to end the tenancy before the end of the fixed term*". The landlord was apprised that the parties agreed the tenancy would end in accordance with their Mutual Agreement to End the Tenancy, and not due to a material breach of the agreement, or other cause compelling the landlord to end the fixed term agreement. The landlord testified that for the first time in their 17 years as landlord they chose to end the tenancy by mutual agreement when the tenant was

caught smoking in the unit, rather than by a landlord's notice to end tenancy for breach of a material term of the agreement.

### **Analysis**

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

As applicant the landlord bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the landlord. On the preponderance of the relevant document and photo image submissions, and the relevant testimony of the applicant I find as follows on a balance of probabilities.

**Section 7** of the Act provides as follows in respect to the landlord's claims for loss and 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.

Pursuant to Section 7 the landlord bears the burden of establishing their claims by proving *the existence of a loss* and that it *stemmed solely directly from a violation of the agreement or a contravention of the Act on the part of the tenant*. Once that has been established, the landlord must then *provide evidence that can reasonably verify the monetary value or amount of the loss*. Finally, the landlord must show that *reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed*.

I accept the landlord's evidence adequately sets out that the tenant agreed with the landlord retaining the costs of carpet cleaning in the amount of **\$78.75** therefore this amount is granted.

I accept the landlord's evidence aptly provides that the rental unit was left unclean and as a result I grant the landlord their claim for cleaning in the amount of **\$280.00**.

I accept the landlord's evidence sufficiently establishes the rental unit access devices for the mailbox and the garage were not returned and as a result I grant the landlord their claim for their replacement in the sum of **\$143.43**.

In respect to the landlord's claim for painting I find that **Section 21** of the **Residential Tenancy Regulation** states 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.

I find that in the absence of other factors, the evidence before me respecting the state of repair and condition of the rental unit walls and ceilings is that of the contents of the CIR and the landlord's testimony and photo images purporting of soiled surfaces. I find that if the rental unit was newly painted at the outset of the tenancy it is my expectation, and in the landlord's interest, for the CIR to reflect this information or for the landlord to have provided proof the rental unit was newly painted at the start of the tenancy, given now their request of compensation for again entirely repainting the unit 1 year later.

However, this is not the evidence. But moreover, I find that the landlord has not established a preponderance of evidence sufficiently different to the CIR. And, pursuant to above Regulation Section 21, I must therefore accept the CIR as the prevailing evidence indicating that at the end of the tenancy the walls and ceilings of the unit were the same as at the start, "plus dirty". I find that in concert with the landlord's evidence the rental unit may well have benefited from an entire repainting, but as a result of the foregoing I find the landlord has not provided sufficient evidence to support that solely the conduct of the tenant is responsible for the landlord's cost to repaint the unit, and therefore this portion of their application is dismissed.

I find the landlord is not entitled to rent beyond the mutually agreed tenancy end date on the Mutual Agreement to End Tenancy document. I have accepted the landlord's evidence the rental unit was unclean at the end of the tenancy, which the landlord's invoice for cleaning indicates was cleaned May 05, 2017. Even if I were to have accepted the landlord's claim for painting, their invoice for painting indicates the painting was carried out after the first week of June 2017, amounting to an unsupported delay of almost 6 weeks from the tenancy end date. I find the landlord has not provided sufficient evidence to prove they took reasonable measures to mitigate a loss of revenue in this matter and as a result I dismiss the claim as requested. None the less, I find the landlord is entitled to a quantum of compensation in respect to cleaning the unit and grant the landlord loss of revenue in the set amount equivalent to one week's rent of **\$225.00**.

In respect to the landlord's claim for *liquidated damages* It must be noted that even if I were to accept the landlord's argument that smoking in the rental unit is a material breach of the tenancy agreement and that the landlord's pre-estimate of \$625.00 for *liquidated damages* is not a penalty, the Act does not permit a landlord to automatically end a tenancy for breaching a material term unless the breach is not corrected within a reasonable time after written notice to do so as stated by Section 47(1)(h) of the Act. I do not agree with the landlord they successfully ended the tenancy for a material breach in accordance with their own clause respecting liquidated damages or by their initial use of a Mutual Agreement to End the Tenancy, rather than following the Act. As a result, I find the landlord has failed to establish entitlement to their claim for *liquidated damages*, and this claim is therefore dismissed.

As the landlord was in part successful in their application they are entitled to recover their filing fee from the tenant. The security deposit will be off-set from the award made herein. *Calculation for Monetary Order is as follows.*

carpet cleaning	\$78.75
cleaning	\$280.00
mailbox rekeying	\$99.75

garage remote replacement	\$43.68
filing fee	\$100.00
Monetary award	\$602.18
<i>Less security deposit in trust</i>	<i>-\$450.00</i>
<b>Monetary Order</b>	<b>\$152.18</b>

### **Conclusion**

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

**I Order** that the landlord may retain the tenant's security deposit of \$450.00 in its entirety in partial satisfaction of their award.

**I grant** the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of **\$152.18**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**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: October 25, 2017

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Residential Tenancy Branch