



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlords applied requesting a monetary order for damage to the unit; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for the return of the security deposit; and for compensation for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they have exchanged the documentary evidence before me.

I have reviewed all oral and written 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.

### Preliminary and Procedural Matters

The Landlords submitted documentary and digital evidence at a Service BC location to be forwarded to the Residential Tenancy Branch (RTB). The file size of the digital evidence was too large to be uploaded into the new case management system and the evidence was subsequently returned to the Landlord rather than being forwarded directly to the Arbitrator. The Landlords digital and documentary evidence was not before me at the time of the original hearing.

The original hearing was adjourned to provide the Landlord time to re-submit their evidence. The Landlord provided their documentary evidence to the Residential Tenancy Branch on January 30, 2018.

### Issues to be Decided

- Are the Landlords entitled to compensation due to damage and cleaning to the rental unit?
- Can the Landlords retain the security deposit in partial satisfaction of the claim?
- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy commenced on April 1, 2016, as a six month fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,200.00 was due on the first day of each month. The Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$300.00 to the Landlord.

The Parties testified that the Tenants moved out of the rental unit on June 1, 2017.

#### Tenant's Application

The Tenants testified that they received a 2 Month Notice To End Tenancy For Landlord's Use Of Property from the Landlord dated February 27, 2017. The 2 Month Notice indicated that the rental unit would be occupied by the Landlord.

The Tenants accepted the 2 Month Notice and moved out of the rental unit on June 1, 2017.

The Tenants testified that the Landlord did not occupy the unit and listed the property for sale less than 2 weeks later. The rental property was sold approximately two months later. The Tenants submitted that the new purchaser rented the unit out to a new tenant.

In response, the Landlord confirmed that the home was put up for sale and that it sold on August 11, 2017. The Landlord submitted that she was not aware of her obligations under the law. The Landlord stated that she does not take issue with having to pay compensation to the Tenants.

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the Landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (2) of the Act states that in addition to the amount payable under subsection (1), if  
*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*  
*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

#### Landlord's Application

The Landlords submit that the rental unit was left dirty and damaged at the end of the tenancy and they are seeking compensation for the cost of cleaning and repairing damage to the rental unit.

The Landlord submitted that at the time of the move out inspection on June 1, 2017, the Tenant argued that every concern the Landlord identified was just normal "wear and tear". The Landlord submitted that he was feeling under duress to write what the Tenants wanted.

#### Carpet Cleaning \$136.49

The Landlord testified that the carpet in the basement was left dirty. The Landlord testified that the carpet was clean at the start of the tenancy. The Landlord provided a photograph showing a stained carpet.

In response, the Tenants submitted that the Condition Inspection Report indicates that carpet is good.

#### Back Yard Damage \$512.27

The Landlord testified that the Tenant's dog damaged the back yard the grass was dead, and there were tire ruts. The Landlord also testified that the grass was not mowed and there was dog feces throughout the yard.

The Landlord testified that they repaired the yard using sand and grass seed. The Landlord is seeking compensation in the amount of \$179.77 for the cost of the sand and grass seed and \$332.50 for the labour cost of the Landlord repairing the yard. The Landlord is charging \$35/hour for the labour.

The Landlord provided nine color photographs showing the condition of the yard at the end of the tenancy.

In response, the Tenants acknowledged that their dog dug some holes in the yard and did some damage. The Tenants oppose the amount of compensation the Landlord is claiming. The Tenant's submitted that the repair should only cost \$60.00 for sand and \$20.00 for labour.

#### Damage to the House

The Landlord testified that the interior of the house was painted just prior to the Tenants moving in. The Landlord testified that the walls were left in a dirty condition. The Landlord provided photographs of the walls and light switches.

The Landlord testified that the windows in the unit were left with mildew and the bathroom tub needed to be caulked. The Landlord is seeking \$16.66 for the cost of the caulking.

The Landlord submitted that here is a crack in the wall which they attribute to the Tenant slamming the door. The Landlord submitted that the Tenants are responsible for a hole in the bedroom floor. The Landlord provided a photograph showing a crack in the wall and a small hole on flooring. The Landlord is seeking \$9.98 for the wood filler to repair the hole in the floor.

The Landlord submitted that the Tenants did not clean the light fixtures and they are responsible for the cost to clean them. The Landlord provided a photograph of a light fixture in support of their testimony.

The Landlord testified that the Tenants are responsible for the repair cost for a damaged door and hinge. The Landlord is seeking \$11.98 for the cost of a new hinge.

In addition to the Landlords claims for the cost of materials, the Landlord is seeking \$530.00 for the labour cost to clean the unit. The Landlord submitted that it took them 26.5 hours to clean the unit at a cost of \$20.00 per hour. The Landlord provided photographs of the unit including an unclean fridge, laundry sink, and an unclean area behind the stove and under the washer/dryer.

In response to the Landlord's claims the Tenants submitted that the house was clean from top to bottom. The Tenants submitted that they cleaned the light fixtures before they moved out.

The Tenants submitted that the carpet that was cleaned is a throw rug and the person who cleaned the carpet is the Landlord's cousin.

The Tenants submitted that the photographs were taken after the Tenants had left and they don't know who could have entered after they left.

The Tenants submitted that they have four children, and that the Tenants washed the walls prior to moving out. The Tenants submitted that there were no problems with mildew in the house.

The Tenants submitted that the crack in the wall was a foundational issue related to the Landlords failure to repair the chimney and grout. The Tenant referred to documents regarding a leak in the roof.

The Tenants submitted that the Landlords receipt for a hinge has a date from 2013.

### Security Deposit

The Landlord is requesting to keep all or part of the security deposit and pet damage deposit in satisfaction of the claim for damage. The Landlord made application for dispute resolution seeking to retain the security deposit on June 7, 2017, which was within 15 days from the date the tenancy ended.

## Analysis

### Condition Inspection Report

Sections 23 and 35 of the Act require a Landlord to arrange for an inspection of the rental unit at the start and end of the tenancy. A properly completed condition inspection report 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 parties provided a copy of a condition inspection report that was completed at the start and end of the tenancy.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

### Tenants' Claims

#### Compensation for Breach of the Act

I find the Landlord failed to use the rental property for the stated purpose within the 2 Month Notice for at least 6 months, beginning within a reasonable period after the effective date of the Notice. The Landlord sold the property and the purchaser re-rented the unit to a new Tenant. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Landlords owe the Tenants \$2,400.00.

### Landlords' Claims

#### Carpet Cleaning \$136.49

I find that the condition inspection report (the "CIR") indicates the carpet in the basement was in good condition at the end of the tenancy. The Landlord has provided two color photographs showing dirty carpets in the rental unit. The Tenants did not testify that they cleaned the basement carpet; they only submitted that the CIR shows it as good. I find that the Landlord has provided the stronger evidence that the carpet was left dirty.

I grant the Landlord \$136.49 for the cost of the carpet cleaning.

#### Back Yard Damage \$512.27

I find that the Tennats are responsible for the damage to the yard. The CIR indicates that at the end of the tenancy the backyard and side yard needed work due to holes and dead grass. The Landlord provided photographic evidence showing damaged areas of the yard and the Tenants admitted that their dog did damage to the back yard.

Based on the evidence of damage before me I do not accept the Tenant's submission that the cost to repair the damage should only cost \$80.00. I grant the Landlord \$512.27 for the cost of materials and labour to mow, repair, and seed the yard.

#### Damage and Cleaning

I find that the Tenants are responsible to compensate the Landlord for some cleaning and repairs. The CIR indicates there were areas of the unit that were left dirty at the end of the tenancy. The CIR indicates six windows had mildew and the walls were scuffed in five rooms, and a couple had holes. The Landlords photographic evidence supports the testimony that the walls were dirty, the switches unclean, and the light fixture was not clean.

I do not accept the Tenants testimony that after they moved out somebody else could have been responsible for the damage. The Landlord did not re-rent the unit and it was listed for sale within two weeks after the Tennats moved out. It makes no sense that the Landlord would put the unit into a dirty condition when they were trying to sell it.

I find that the Landlords claim for 26.5 hours for \$530.00 to clean the unit to be high. I find that the evidence does not support a claim for that amount. I find it reasonable to award the Landlord compensation for 16 hours (two days) of cleaning. I grant the Landlord \$320.00 for cleaning the unit.

There is insufficient evidence from the Landlord that the Tenants are responsible for the crack in the wall.

The Landlord is awarded the cost for the caulking and wood filler. I grant the Landlord \$26.64. The Landlords claim for the door hinge is dismissed as the Landlord submitted an incorrect receipt.

#### Set Off of Claims

The Tenants are awarded a monetary award in the amount of \$2,400.00 pursuant to section 51(2) of the Act.

The Landlords are awarded a monetary award in the amount of \$995.40 for cleaning and repair costs.

The Landlords are holding a security deposit of \$600.00 and a pet damage deposit of \$300.00. I authorize the Landlords to retain the deposits in partial satisfaction of their award. The Tenants owe the Landlords the balance of \$95.40.

After setting off the amount of \$95.40 that remains owing to the Landlords against the \$2,400.00 awarded to the Tenants, I grant the Tennats a monetary order in the amount of \$2,304.60. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants were equally successful in their applications, I decline to order either party to pay the other for the cost of the filing fees for this hearing.

### Conclusion

The Landlords breached section 49 of the Act and owe the Tenants \$2,400.00.

The Tenants are responsible for cleaning costs and damage to the rental unit and owe the Landlord \$995.40

The Landlords are authorized to retain the security deposit of \$600.00 and pet damage deposit of \$300.00.

After setting off the amounts owed by each party, I grant the Tenants a monetary order in the amount of \$2,304.60. This order must be served on the Landlords and may be enforced in Provincial 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: February 16, 2018

---

Residential Tenancy Branch