



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARY LENTZ PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD,

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenants in the amount of \$4,090.89, authority to retain their security and pet damage deposit and to recover the filing fee.

The hearing was conducted by teleconference on March 13, 2018. 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 *Residential Tenancy Branch 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 included her personal name on the Application for Dispute Resolution. The Landlord also included another name for the community in which the rental unit is located. At the hearing, the parties confirmed that the address of the rental unit is as noted on the tenancy agreement. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure*, I

amend the Application to properly note the Landlord's name and the community in which the rental unit is located.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent, damage to the rental unit and losses under the *Act*, the *Regulation* or the tenancy agreement?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord, C.L. is a property manager who managed the property on behalf of the owner. Both C.L. and the owner testified at the hearing.

C.L. testified that the tenancy was first established February 1, 2014 with the mother, L.S., and her son, A.S. The Landlord stated that she performed a move in inspection at that time.

On September 1, 2015 the daughter, J.M., moved into the rental unit and the Landlord, and the Tenants L.S. and J.M. entered into a new tenancy agreement. C.L. confirmed that a move in inspection was not conducted at that time.

A copy of the tenancy agreement between the C.L, L.S. and J.M. was provided in evidence which confirmed that monthly rent was payable in the amount of \$1,350.00 per month and the Tenants paid \$675.00 as a security deposit and \$500.00 as a pet damage deposit.

The Landlord submitted a copy of the condition inspection report which included details for the move in on the first tenancy (February 2, 2014) and move out for the second tenancy on August 11, 2017.

In the hearing before me, the Landlord sought compensation for the following:

Removal of carpet	\$120.00
Removal of garbage	\$150.00

Clean up of smoke damage	\$140.00
Cleaning of front deck	\$120.00
Cleaning of outside/yard	\$150.00
Removal of recycling	\$160.00
Cleaning windows	\$180.00
Garbage removal	\$90.00
Unpaid rent (pro-rated)	\$496.76
Filing fee	\$100.00
Replacing locks	\$199.95
Replacing carpet (30%)	\$1,081.43
Cleaning supplies	\$146.75
Bathroom repair items	\$276.05
Bathroom repair items	\$162.52
Ceiling repair	\$152.86
Bathroom repair items	\$86.93
Cleaning products	\$69.64
Glass door fireplace	\$168.00
Moving gas tank	\$40.00
<b>TOTAL CLAIMED</b>	<b>\$4,090.89</b>

C.L. stated that the carpets were approximately seven years old at the time the first tenancy began and 10 years old at the time the tenancy ended.

C.L. also claimed that the Tenants smoked in the residence and caused damage to the rental unit as a result of smoking as well as their fireplace usage which required cleaning to clear the smell.

C.L. confirmed that after the tenancy ended the owner moved into the rental unit. A copy of the 2 Month Notice to End Tenancy for Landlord's Use issued July 24, 2017 was provided in evidence.

In terms of the \$496.76 claimed for pro-rated rent, C.L. testified that the \$496.76 represented 11 days in which they were in occupation in August as they vacated on August 11, 2017.

The Owner, M.K., also testified. She confirmed that she moved into the rental unit after the tenancy ended.

M.K. testified that she paid L.T., a handyman who does clean-up work, to clean and repair the rental unit at the end of the tenancy.

M.K. testified that she had the locks changed at the end of the tenancy because she wanted to have a “fresh set of locks”.

M.K. stated that the carpets were “not that old”, but she did not know how old they were at the time the tenancy began.

M.K. claimed \$525.50 for “bathroom repair items”. She stated that the sink was “plugged up” and the toilet was damaged and required replacement.

M.K. claimed that the Tenants broke the glass fireplace door and it required replacement. She stated that the fireplace door was not broken when the first tenancy began, and stated that she believes something happened between when the son moved out and the daughter moved in.

M.K. also claimed \$40.00 for the cost to remove the Tenants’ gas tank which she claims was left on the property.

In response to the Landlord’s claim, the Tenant J.M. testified as follows. J.M. stated that C.L. told them they were not allowed to give 10 days’ notice until the beginning of the month, which is why they stayed in the rental unit until August 11, 2017.

J.M. stated that “in general” they had the house cleaned when they moved out.

J.M. stated that the home was in the same condition as when she moved in September 1, 2015. She further confirmed that the Landlord did not do a move in condition inspection at that time, nor did she inspect the rental unit when her tenancy began.

J.M. stated that she took photos of the rental unit when they moved out. She further stated that she was present during the move out condition inspection report. She claimed that the agent for the property owner, C.L., refused to allow her to participate in the move out condition inspection as she stated that she was not a “real tenant”, despite being on the tenancy agreement. J.M. also stated that her mother did not agree to any of the notations on the move out as C.L. refused to let her review the document; C.L. told her that she simply needed to sign it to prove that she was present. The Tenants provided in evidence a copy of a message sent from the Tenant to the Landlord wherein they dispute the Landlord’s conduct with respect to the move out inspection.

J.M. stated that the carpet upstairs looked at least 10 years old and was not installed properly, which made it look like “wavy in the picture”. She also stated that the photo depicting the torn carpet was where the door shut and this was also due to poor installation.

The photos provided in evidence by the Landlord included photos of furniture and dishes; J.M. confirmed that those items were owned by the property owner and remained when they moved out. J.M. further stated that the photos which depict debris on the hardwood floor are from the hide-a-bed couch which was left by the Landlord; she confirmed that she did not lift it or clean under it as she claimed it was very heavy.

The Tenant confirmed that the photos of the broken down cardboard are of her cardboard. She agreed to contribute some amount to the cost of disposal but feels the amount claimed by the Landlord was “extremely high”.

The Tenant conceded that she did not wash walls or vacuum before she left because the vacuum had already been loaded up. She agreed that some cleaning was required, but again stated that she disputed the amounts claimed by the Landlord as being excessive.

The Tenant stated that the glass door to the fireplace was broken when she moved in. She further stated that she never had a fire in the fireplace while she was there and only used it decoratively with candles.

J.M. stated that she did not smoke inside the home as she has two children and at all times she smokes outside.

J.M. also stated that the photos submitted by the Landlord in support of the condition of the rental when they moved in are in fact not representative of the condition of the rental as the door isn’t even the same. She stated that the photos look as though they were taken when she first bought the home as they depict the home in “pristine condition”.

In reply to the Tenants’ submissions, C.L. confirmed that the rental unit was partially furnished with the Landlord’s items.

### Analysis

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

The Landlord argued that the tenancy began in 2014 with the Tenant, L.S. and her son, A.S., and continued on September 1, 2015 when the daughter, J.M., moved into the rental unit and the parties entered into a new tenancy agreement.

The Landlord further submits that the move in condition inspection report for the *first* tenancy should be accepted as evidence of the condition of the tenancy at the start of the *second* tenancy. I disagree. While the mother, L.S., may have remained in the rental unit, a new tenancy began September 1, 2015 and the Landlord should have completed an inspection in accordance with the *Act* and the *Regulations*. It is the Landlord's responsibility to perform a move in condition inspection report at the start of the tenancy, and I find that she failed to honour this obligation by failing to inspect the rental when the tenancy began September 1, 2015.

Consequently, I am left without compelling evidence of the condition of the rental at the start of the subject tenancy. The Tenant, J.M., testified that the rental unit was in the same condition at the end of the tenancy as it was at the start. The Landlord has failed to submit evidence to dispute the Tenants' claims in this regard.

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.

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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Landlord applies for monetary compensation from the Tenants, L.S. and J.M. for unpaid rent and damage to the rental unit.

The parties agree the Tenants vacated the rental unit on August 11, 2017. Section 26 of the *Act* mandates that a tenant must pay rent. The Tenants allege they did not move out sooner as they were informed by the Landlord they could only give 10 days' notice (pursuant to section 50 of the *Act*) at the start of the month; while this information is incorrect, the fact is the Tenants were in occupation of the rental unit until August 11,

2017 and are responsible for paying rent for the days they were in occupation. Accordingly, I award the Landlords the **\$496.76** claimed for unpaid rent.

The Landlord alleges the carpets required replacement at the end of the tenancy. The Landlord also testified that the carpets were 10 years old when the tenancy ended. The Tenants dispute this information and allege the carpets were older. *Residential Tenancy Policy Guideline 40* provides that carpets have a useful building life of 10 years; as such, I find it likely the carpets would have required replacement in any event of the tenancy due to age alone. I therefore dismiss the Landlord's claim for related compensation.

Based on the photos submitted by the Landlord I am persuaded that the Tenants did not remove all of their garbage and recycling from the rental unit at the end of the tenancy and did not clean the outside areas, to the "reasonable standard" as required by the *Act*. I therefore award the Landlord the following: **\$240.00** claimed for removal of garbage; **\$120.00** claimed for cleaning the front deck; **\$150.00** claimed for cleaning the outside/yard; and, **\$160.00** claimed for removal of recycling.

I am not persuaded by the Landlord's claim that the rental unit was smoke damaged. The Tenant, J.M., denied smoking in the rental unit and testified that she did not use the fireplace and merely used it to burn decorative candles. I am unable to reconcile these discrepancies and therefore find the Landlord has submitted insufficient evidence to support their claim that the rental unit was smoke damaged. I therefore dismiss their claim for related compensation.

Section 25 of the *Act* provides that a Landlord is responsible for the cost of rekeying locks should a new tenant make such a request. In the case before me, the owner regained possession of the rental unit; and, she testified that she replaced the locks because she wanted a "fresh set of locks". I find the Tenant is not responsible for the related costs and therefore dismiss the Landlord's claim in this regard.

A party making a claim for compensation must, pursuant to section 7 of the *Act*, mitigate their losses. The owner testified that the bathroom sink was plugged and required replacement. In this case, I was not provided with any evidence that the Landlord attempted to repair the sink prior to replacing it, or that replacing it was the only option. She also stated the toilet was "damaged" and required replacement. Again, she failed to show that they attempted to repair the toilet or that replacing it was the only option. I find it more likely the Landlord replaced these fixtures for the same reason she changed the locks, and that is that she was moving back into the rental and wanted "fresh"



fixtures. As such, I find the Landlord has failed to show they minimized their losses in this regard and I therefore dismiss their related claim.

I am unable, based on the evidence before me, to find that the windows required cleaning at the end of the tenancy. I therefore, dismiss the Landlord's claim in this regard.

I am also unable to find, based on the evidence before me, that the Tenants are responsible for the ceiling repair. Again I dismiss the Landlord's claim for related compensation.

I accept the Landlord's claim that the Tenants failed to remove their oil tank and award the Landlord the **\$40.00** claimed.

The Landlord claimed a total of \$216.39 in cleaning supplies. I find this to be an excessive amount based on the photos submitted and I award the Landlord the nominal sum of **\$100.00** for cleaning supplies.

The Landlord claimed the Tenants broke the fireplace door; the Tenant J.M. testified that it was broken when she moved in. I am unable, based on the evidence before me, to find that the Tenants damaged the glass fireplace door and I therefore dismiss the Landlord's claim in this regard.

As the Landlord has only been partially successful I dismiss their claim for recovery of the filing fee.

### Conclusion

I find the Landlord is entitled to monetary compensation in the amount of **\$1,306.76** calculated as follows:

Unpaid rent (pro-rated)	\$496.76
Removal of garbage	\$240.00
Cleaning of front deck	\$120.00
Cleaning of outside/yard	\$150.00
Removal of recycling	\$160.00
Moving gas tank	\$40.00
Cleaning supplies	\$100.00
<b>TOTAL AWARDED</b>	<b>\$1,306.76</b>

Pursuant to sections 38 and 72, I authorize the Landlord to retain the Tenants' \$675.00 security deposit and \$500.00 pet damage deposit towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$131.76**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 13, 2018

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Residential Tenancy Branch