



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDL-S, MNDCL-S, FFL, FFT, MNSD, MNDCT

### Introduction

A hearing was convened on December 11, 2018 in response to cross applications. There was insufficient time to conclude the hearing on December 11, 2018 so that hearing was adjourned. The hearing was reconvened on February 04, 2019 and was concluded on that date.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on August 17, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant with the initials "BP", via registered mail. The Tenant with the initials "BP" acknowledged receipt of these documents.

The Landlord stated that on August 17, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant with the initials "JW", via registered mail. The Landlord submitted Canada Post documentation that indicates these documents were received by the Tenant with the initials "JW". In the absence of evidence to the contrary I find that these documents have been served to the Tenant with the initials "JW" in accordance with section 89 of the *Residential Tenancy Act (Act)*. As these documents have been properly served to that party, the hearing proceeded in his absence.

On August 16, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to both Tenants with the Application for Dispute

Resolution. The Tenant with the initials “BP” acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 29, 2018 and October 31, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to both Tenants on August 17 2018. The Tenant with the initials “BP” acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On November 01, 2018, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that on November 03, 2018 this evidence was left in a mail box belonging to the Tenant with the initials “BP”. That Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 30, 2018 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant with the initials “BP” stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 06, 2018 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant with the initials “BP” stated that this evidence was served to the Landlord. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

There was a considerable amount of confusion regarding service of evidence. The parties were therefore directed to advise me if we discussed a document that had not been served to them. Neither party raised an issue regarding evidence during these hearings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Are the Tenants entitled to compensation for various reasons related to the tenancy?

#### Background and Evidence

The Landlord and the Tenant with the initials "BP", hereinafter referred to as the Tenant, agree that:

- the tenancy began on June 01, 2015;
- the tenancy ended on July 31, 2018;
- the Tenant and a co-tenant agreed to pay monthly rent of \$1,450.00 by the first day of each month;
- the Tenants paid a security deposit of \$700.00;
- the Tenant provided the Landlord with a forwarding address, in writing, on August 03, 2018.

The Landlord and the Tenant agree that when this tenancy began they jointly inspected the rental unit and the condition of the unit was recorded on a two page diagram of the rental unit. Both parties have signed this document.

The Landlord and the Tenant agree that the rental unit was jointly inspected at approximately 6:00 p.m. on July 31, 2018. The parties agree that during the inspection the Landlord was making notes on the reverse of the aforementioned diagram of the rental unit. The Landlord stated that he asked the Tenant to sign this document but the Tenant refused to sign the document. The Tenant stated that the Landlord asked him to sign the reverse of this document but the Landlord snatched it away from him before he could sign it.

The Landlord stated that after this rental unit was inspected he completed the condition inspection report (RTB-27) that was submitted in evidence, in the absence of the Tenant. The Landlord stated that it was not completed on July 31, 2018 because the Tenant refused to return to the house with him to complete the report. The Tenant stated that the Landlord did not have this report with him when the unit was inspected at the end of the tenancy.

The Landlord and the Tenant agree that they Landlord showed the Tenant a copy of the RTB-27 after it was completed and the Tenant refused to sign it.

The Landlord is seeking compensation, in the amount of \$46.75, because the Tenant did not vacate the rental unit until 6:00 p.m. on July 31, 2018. He stated as a result of the late departure he incurred overtime costs at a different job site so that he could ensure his employees would be able to clean the unit, which was not properly cleaned by the Tenant. The Tenant stated that he was unable to vacate the rental unit on time for personal reasons.

The Landlord is seeking compensation, in the amount of \$220.50, for cleaning the rental unit. The Landlord stated that the rental unit required additional cleaning at the end of the tenancy. He stated there was food left in the fridge, personal items left in the lower living area, and the bathroom in the lower area needed cleaning. The Landlord submitted an invoice from his company to show that the Landlord incurred this expense.

The Tenant stated that the rental unit did not need any cleaning; that food was not left in the fridge; that the lower area was clean; and that the cleaning lady left the unit in clean condition.

In his written submission the Tenant declared that his cleaning lady “never finished her job which she was hired to do” because the Landlord physically assaulted her.

The Landlord is seeking compensation, in the amount of \$157.50, for cleaning the carpet. The Landlord and the Tenant agree that the carpet was dirty and had not been cleaned at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$60.00, for firewood. The Landlord stated that the firewood was being stored on the property and that the Tenant told him he sold the wood. The Tenant stated that he spoke with a relative about selling him the firewood; the relative did not want to purchase the wood; that he noticed the wood was missing after he returned home from work one day; and he does not know who took the wood.

The Landlord is seeking compensation, in the amount of \$135.25, for administrative costs and mailing costs associated with participating in these proceedings.

The Tenant is seeking \$220.50 for the cost of cleaning the rental unit. He stated that he is claiming this amount because this is the amount he paid to have the rental unit cleaned, and that the cleaner was unable to complete the cleaning because the Landlord physically assaulted her.

The Tenant is seeking \$50.00 for the cost of power washing the deck. The Tenants stated that the deck was power washed at the end of the tenancy; that it did not need to be power washed; and that the Landlord should pay for the cost of power washing because it did not need to be power washed.

The Tenant is seeking compensation of \$125.25 for time spent preparing for the hearing; \$10.00 for costs of serving documents; \$50.00 for the stress associated to participating in these proceedings; and \$100.00 for a “dispute resolution fee”, which he explained was related to time spent participating in these proceedings.

The Tenant is seeking \$60.00 for storing wood debris on the residential property.

The Tenant stated that:

- on occasion the Landlord would prune trees and leave the debris on the residential property;
- he would leave the debris for various period of time, sometimes up to one month; and
- the debris was placed partially on the driveway, which impacted the Tenants’ ability to park in the driveway.

The Landlord stated that:

- he pruned apple trees on three occasions during this tenancy;
- on another occasion debris from a large pine was left on the property for a short period;

- he left the tree debris on the ground for a couple of days;
- the debris did not impact the Tenants' ability to park on the residential property; and
- the Tenants never asked him to move the debris.

The Tenant is seeking \$100.00 for electricity used by the Landlord. The Tenant stated that:

- when the Landlord pruned trees he used a skill saw;
- he does not know if the skill saw was battery powered; and
- when the Landlord was pruning the trees he observed an extension cord running from the house to the worksite.

The Landlord stated that:

- he did not use electricity when he was pruning the trees;
- he used a battery operated skill saw;
- he did not have an extension cord running to the worksite; and
- he submitted a photograph of the battery operated tools he used.

The Landlord stated that the Tenant with the initials "J.W." has told him that he is not seeking the return of the security deposit. He stated that he has concerns about returning the security deposit to the Tenant, given that it was paid by both Tenants. The Tenant stated that he paid the security deposit; that his co-tenant paid half of the deposit to him; and that he intends to return half of the security deposit to his co-tenant if he is successful in recovering the deposit.

### Analysis

On the basis of the undisputed evidence I find that the Landlord and these two tenants entered into a tenancy agreement and that a security deposit of \$700.00 was paid.

Section 23 of the *Act* reads:

- 23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulation.

Section 20 of the Residential Tenancy Branch Regulation outlines the standard information that must be included on a condition inspection report, which includes:

(a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;

(b) the address of the rental unit being inspected;

(c) the date on which the tenant is entitled to possession of the rental unit;

(d) the address for service of the landlord;

(e) the date of the condition inspection;

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

(i) entry;

(ii) living rooms;

(iii) kitchen;

(iv) dining room or eating area;

(v) stairs;

(vi) halls;

(vii) bathrooms;

(viii) bedrooms;

(ix) storage;

(x) basement or crawl space;

(xi) other rooms;

(xii) exterior, including balcony, patio and yard;

(xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I, .....

Tenant's name

[ ] agree that this report fairly represents the condition of the rental unit.

[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....  
.....  
.....  
.....;

(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

On the basis of the undisputed evidence I find that the Landlord and the Tenant jointly inspected this rental unit at the start of the tenancy.

On the basis of the undisputed evidence I find that the Landlord recorded the condition of the rental unit at the time of the initial inspection on a two page diagram of the rental unit, which is signed by both parties and is dated May 30, 2015. This document appears to be an addendum to the written tenancy agreement and, as such, contains much of the information required by section 20 of the Residential Tenancy Branch Regulation. Although this Landlord is missing some of the information required by section 20 of the Residential Tenancy Branch Regulation, I find the missing information does not affect the substance of the report and is not intended to mislead the Tenant. I therefore find that the condition inspection report completed by the Landlord at the start of the tenancy is adequate, and that the Landlord complied with section 23(4) of the *Act*.

Section 35 of the *Act* reads:

- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
  - (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.



On the basis of the undisputed evidence I find that the Landlord and the Tenant jointly inspected this rental unit at the start of the tenancy, at which time the Landlord was attempting to complete his version of the final condition inspection report. I therefore find that the Landlord complied with sections 35(1) and 35(3) of the *Act*.

I find that I have insufficient evidence to determine whether the Tenant refused to sign the final condition inspection report, as the Landlord contends, or if the Landlord withdrew his offer to allow the Tenant to sign the report, as the Tenant contends. Regardless, the undisputed evidence is that it was not signed by the Tenant and I find, therefore, that it has little evidentiary value.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

37 of the *Act* reads:

- 37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
  - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(1) of the *Act*, as he did not vacate the rental unit by 1:00 p.m.

In addition to establishing that the Tenant breached the *Act*, the Landlord must also accurately establish the cost of remedying the breach whenever compensation for damages is being claimed. I find that the Landlord submitted insufficient evidence to establish that he suffered a loss of \$46.75 as a result of the Tenant remaining in the rental unit for an extra five hours. In the event the Landlord incurred overtime costs for cleaning the unit, those costs should be reflected on his claim for cleaning. I find that it is simply too far removed to conclude that he incurred overtime costs at a different job site so that he could ensure his employees would be able to clean the unit. I therefore dismiss the Landlord's application for \$46.75.

I favour the testimony of the Landlord, who contends the rental unit required additional cleaning at the end of the tenancy, over the testimony of the Tenant, who testified that the rental unit did

not need additional cleaning at the end of the tenancy. I favoured the testimony of the Landlord in this regard, in part, because his evidence was consistent and forthright. Conversely, I find that the Tenant's testimony that no additional cleaning was required contradicts his written submission that the cleaning lady "never finished her job which she was hired to do" because the Landlord physically assaulted her.

I find that it is not necessary for me to determine whether the Landlord assaulted the person cleaning the rental unit, as that matter is not within my jurisdiction. I find the matter is largely irrelevant to my decision because even if I were to conclude that the Landlord prevented the Tenant from continuing to clean the rental unit after 6:00 p.m. on July 31, 2018, the cleaning should have been completed by that time. There is a legal requirement that the rental unit should be vacated and cleaned by 1:00 p.m. on the last day of the tenancy and the Landlord was not obligated to extend this time period to allow the tenant to complete additional cleaning.

I therefore find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$220.50.

I find that the Tenant attempted to comply with his requirement to clean the rental unit by hiring a cleaner. Given that the cleaner was cleaning the unit, which the Tenant was legally required to do, I find that the Tenant is not entitled to compensation for the cost of cleaning the unit. Even if I accepted the Tenant's submission that the Landlord prevented the cleaner from completing the cleaning, I would find that the cost of the initial stages of cleaning should be borne by the party responsible for cleaning, which is the Tenant. I therefore dismiss the Tenant's application to recover the costs of cleaning.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed to leave the carpet in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was \$157.50.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant sold firewood from the residential property. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Landlord's submission that the wood was sold or to refute the Tenant's submission that the wood was removed by an unknown party while he was at work. As the Landlord has failed to meet the burden of proving the Tenant sold the firewood, I dismiss the Landlord's application for compensation for the missing firewood.

On the basis of the undisputed evidence I find that the Landlord periodically cut/pruned trees on the residential property. I find that this is regular maintenance which the Landlord has the right to complete. I find that there is insufficient evidence to establish that this maintenance reduced

the value of this tenancy. In determining that there was insufficient evidence to establish the value of the tenancy was reduced I was influenced by:

- the absence of evidence to corroborate the Tenant's testimony that the debris was left on the property for more than a few day or to refute the Landlord's testimony that it was not;
- the absence of evidence to corroborate the Tenant's testimony that the debris impacted the Tenants' ability to park in the driveway or to refute the Landlord's testimony that it did not; and
- the absence of evidence to corroborate the Tenant's testimony that he asked the Landlord to move the debris or to refute the Landlord's testimony that he did not.

As the Tenant has submitted insufficient evidence to establish the value of the tenancy was reduced as a result of wood debris being left on the residential property, I dismiss the Tenant's claim for compensation for this issue.

I find that the Tenant submitted insufficient evidence to establish that the Landlord used the Tenant's electricity. In determining that there is insufficient evidence to establish the Landlord used the Tenant's electricity I was heavily influenced by the absence of evidence to corroborate the Tenant's submission that electricity was used or to refute the Landlord's testimony that he used a battery powered saw.

As the Tenant has submitted insufficient evidence to establish the Landlord used the Tenant's electricity, I dismiss the Tenant's claim for compensation for electricity usage.

In the event that the Tenant believed the deck did not need to be power washed at the end of the tenancy, the Tenant had the option of not washing it. In the event the deck was not power washed at the end of the tenancy and the Landlord believed the deck needed cleaning, the Landlord had the option of seeking compensation for cleaning the deck. In these circumstances, where the Tenant voluntarily power washed the deck, the Tenant is not entitled to compensation for doing so. A landlord is not obligated to compensate a tenant for labour the Tenant voluntarily completes at the rental unit. I therefore dismiss the Tenant's application to recover the cost of power washing the deck.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's application for administrative costs and mailing costs associated to these proceedings. I also dismiss the Tenant's application for time spent preparing for the hearing; for costs of serving documents; and for stress associated to participating in these proceedings.

I find that the Landlord's Application for Dispute Resolution has merit. I find that the Tenant's Application for Dispute Resolution also has merit, given that a portion of the security deposit

must be returned to him. I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$380.00, for cleaning. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$380.00 from the Tenants' security deposit of \$700.00 in full satisfaction of this monetary claim.

As the Landlord has not established a right to retain all of the Tenants' security deposit, I find that he must return the remaining \$320.00. Based on these determinations I grant the Tenants a monetary Order for \$320.00. This monetary Order names both Tenants, as both Tenants are named as Applicants on this Application for Dispute Resolution. As these Tenants are co-tenants, the Landlord may return the deposit to either party. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: February 05, 2019

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Residential Tenancy Branch