



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEMINI VENTURES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** MNDL-S, FFL

### **Introduction**

This hearing was convened in response to an application by the landlord under the *Residential Tenancy Act* (the Act) for a monetary award for damage and for an order to retain the tenants' security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. Both parties attended the hearing. The tenant acknowledged receiving the evidence of the landlord. The tenant submitted late evidence to this proceeding and testified sending their evidence to the landlord by registered mail on July 15, 2019 to the landlord's postal box, which the landlord testified not receiving. The tenant provided the tacking information for the package indicating the landlord was left a notice card in the P.M. on July 17, 2019.

Rules of Procedure state that the respondent's evidence must be received by the applicant 7 days before the hearing. **Section 90** of the Act states that if served by mail a document is deemed received on the 5<sup>th</sup> day after it is mailed. I find that the earliest the landlord could have received the tenant's mail was 2 days before the hearing in accordance with the deeming provisions of the Act. As a result I found the tenant's document evidence inadmissible and not considered for this matter. None the less, the tenant was permitted to provide evidence through their testimony. It must further be noted that contrary to the tenant's assertions they did not file an application in this dispute. The hearing proceeded on the merits of the landlord's application.

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

Is the landlord entitled to a monetary award for the cost to repair damage to the rental unit and if so, in what amount?

Is the landlord entitled to the monetary amounts claimed?

## **Background and Evidence**

The relevant evidence in this matter is as follows. The rental unit is a house (manufactured home). The tenancy began on June 16, 2016. The payable monthly rent was \$1,040.00, payable on the first of each month. The tenants paid a security deposit of \$500.00 which the landlord retains in trust.

The tenancy ended when the tenants moved out of the rental unit March 30, 2019. The landlord testified they completed a Condition Inspection Report (CIR) when the tenants moved in on June 15, 2016. The landlord also provided a *second move in* CIR dated one month after the start of the tenancy, July 15, 2016. The landlord further provided a move out CIR, although the move out condition inspection date is not stated in the landlord's CIR. The landlord testified that an RCMP police officer attending the move out inspection effectively interfered with the tenant's involvement with its completion. The landlord testified that as a result the move out inspection represents solely their version of the end of tenancy condition.

In the application for dispute resolution the landlord claimed a monetary award in the amount of \$1,978.31 as follows:

- Interior cleaning. The landlord claimed that the tenants left the rental unit unclean; namely, a food splatter on the living room ceiling, dusty conditions, and provided photo images of marker lines on some walls. The landlord claimed the sum of \$262.50 for a cleaning service providing a 'move out' cleaning service of the unit.

The tenant disputed the claim, stating they left the rental unit clean and unmarked.

- Exterior cleaning. The landlord provided an invoice for \$250.00 for a home power washing and exterior windows cleaning for which the landlord claims the tenant were contractually responsible according to a tenancy agreement term respecting yard maintenance.

The tenant disputed being responsible for cleaning the exterior of the house.

- Interior repairs. The landlord claimed a total of \$1465.81 for a list of repairs and materials as follows (labour + materials).

Replacement of 2 internal furnace acoustic panels (\$95.98) claimed removed by the tenant for which they submitted a photo image of one panel in a black garbage bag. The tenant claims the photo image is that of the furnace filter which they acknowledge removing.

Replacement of a missing furnace door latch / knob (\$52.79). The tenant acknowledges that the knob came off on an occasion when door was opened, which they reported to the landlord.

Stove top chip repair (\$52.00). Landlord claims it was *not there* at outset of the tenancy. Tenant claims it was there at outset of tenancy.

Replacement of cupboard door (\$110.34). Landlord provided a photo image they testified as being that of peeled thermo-foil of the doors edge. The tenant claimed it was not a cupboard door but that of the pantry door respecting damage that was there prior to the tenancy outset.

Install 2 blinds – no hardware (\$19.50). The landlord testified the tenant removed 2 blinds, which the tenant acknowledged removing albeit damaged on moving into the unit.

Replacement of damaged wall panel at front door and corner mold (\$266.98). Landlord provided photo images. Landlord claims the panel was damaged and poorly repaired by the tenant. Also the corner mold was damaged. The tenant acknowledged compromising the panel. The tenant claims the landlord intentionally damaged the corner mold.

Replacement of 3 interior doors (\$470.56). Landlord claims that the doors were originally wood grained and subsequently mended “mudded” and repainted in a brown paint. Tenant claims the doors were always painted brown. Landlord provided photo images of brown doors.

Odour remediation (\$249.99). Landlord claims that odour of smoking or smoke persisted within the rental unit after the tenancy for which they employed an ozonisation process to cleanse the interior’s odour. Tenant claims they did not smoke tobacco in the rental unit, however practiced *smudging* within the unit.

The tenant generally disputed all of the landlord’s claims for compensation.

## **Analysis**

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

The landlord bears the burden to prove their claims on a balance of probabilities.

Pursuant to **Section 23** of the Act I find that a *move in* inspection must be performed on the day the tenant is entitled to possession of the rental unit. A move in condition inspection conducted 1 month after the start of the tenancy is not representative of the rental unit at the start of the tenancy. As a result, I do not accept the landlord's CIR dated July 15, 2016 as a valid *move in* inspection therefore do not assign it any evidentiary weight. I prefer the *move in* inspection submitted dated June 15, 2016 as the inspection for the basis of the landlord's claims herein.

Residential Tenancy Act Regulation states as follows pursuant to condition inspection reports.

### **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.

It may be that the RCMP Police interfered with the inspection thereby compromising the tenant's involvement, but it remains that a *move out* inspection attended by both parties but not conducted, completed and signed by both parties in accordance with the Act is subject to rebuttal and diminished evidentiary weight in this dispute resolution proceeding. As a result I will solely assign it evidentiary weight where the parties agree on the state of the rental unit unless there is evidence to the contrary.

**Section 37** of the Act states that at the end of a tenancy the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In respect to the landlord's claim for cleaning, I find that the landlord has not provided sufficient evidence proving the tenant left the rental unit less than *reasonably clean*. Albeit, I find the landlord has provided sufficient photo image evidence indicating a need to erase some marker lines, for which I grant the landlord nominal compensation of **\$25.00**, without leave to reapply.

**Residential Tenancy Policy Guideline 1** effectively stipulates the responsibilities of tenants and landlords. The cleaning of the exterior of a detached rental unit (house) is not the responsibility of a tenant, but moreover, is clearly not a contractual obligation of this tenancy agreement as claimed by the landlord. As a result, I must **dismiss** this portion of the landlord's claim, without leave to reapply.

In respect to the landlord's claim for interior repairs, I prefer the landlord's evidence that the items removed from the inside of the furnace were, on balance of probabilities, not the furnace filter(s) as claimed by the tenant. As a result, I accept the landlord's evidence the tenant is responsible to replace 2 furnace acoustic or thermal panels, for which I grant the landlord **\$95.98**.

In respect to the landlord's claim for a missing furnace door latch / knob, I accept the tenant's evidence it came off as a result of them opening the door. I have not been presented by the landlord evidence that its failure was caused by negligent conduct of the tenant. None the less, I have also not been presented with evidence by the tenant as to the existence of the knob following it coming off the furnace door. As a result, I must **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that the landlord has not provided sufficient evidence supporting that the stove top 'chip' was not present at the outset of the tenancy. As a result, I must **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that the *move in* CIR signed by the tenant on June 15, 2016 does not reflect the claimed damaged cupboard door as being compromised. As a result, on balance of probabilities I find the tenant responsible for its replacement in the claimed amount of **\$110.34**.

I find that the landlord's claim to reinstall 2 blinds the tenant acknowledged removing, as reasonable. Therefore I grant the landlord the claimed amount of **\$19.50**.

As per the tenant's evidence, I accept the tenant caused the wall panel at the front door to be damaged. I accept the landlord's claim for a replacement panel. I have not been presented with evidence that the corner molding was damaged by the conduct of the tenant. As a result, I grant the landlord their claim for solely the wall panel at the front door in the amount of **\$243.99**, without leave to reapply.

I find that the landlord has not provided evidence indicative of the condition of the doors of the unit at the outset of the tenancy in support of the condition of the doors at the end

of the tenancy. As a result I must **dismiss** this portion of the landlord's claim, without leave to reapply.

I accept the tenant's evidence that they practiced smudging within the rental unit throughout the 33 month tenancy. On balance of probabilities, I accept the landlord's claim that at the end of the tenancy the rental unit required an odour cleansing process, for which I grant the landlord their claim for odour remediation in the amount of **\$249.99**.

The landlord is entitled to recover the filing fee for their application. The security deposit will be off-set from the award made herein. Paid tax is added as indicated. Calculation for Monetary Order is as follows.

Furnace panels	\$95.98
cleaning	\$25.00
Cupboard door	\$110.34
Reinstall of 2 blinds	\$19.00
Wall panel at front door	\$243.99
Unit ozonisation process	\$249.99
<i>subtotal</i>	<i>\$744.30</i>
<i>GST on \$744.30</i>	<i>\$37.21</i>
net	\$781.51
Filing fee	\$100.00
to landlord	<b>\$881.51</b>
<i>Less Security Deposit in trust</i>	<i>- \$500.00</i>
<b>Monetary Order - landlord</b>	<b>\$381.51</b>

**I Order** that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an **Order** under Section 67 of the Act for the balance due of **\$381.51**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

### **Conclusion**

The landlord's application in part is granted.

**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: July 24, 2019

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Residential Tenancy Branch