



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNDC-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord and the tenants listed here attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their affirmed testimony and to refer to relevant documentary or digital evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the filing fee?

Background and Evidence

The undisputed evidence is that the tenancy began on or about December 1, 2019, ended on or about May 28, 2020, monthly rent was \$1650, and the tenants paid a security deposit of \$825. The written tenancy agreement shows the tenancy was for a fixed term through May 1, 2020, and the tenants were required to vacate the rental unit on or before that date. The evidence also showed that she is a tenant of another landlord, and sub-let the rental unit to these tenants.

The rental unit was furnished, as the landlord had employment in a resort and intended to return to the rental unit.

The landlord has retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is as follows:

| ITEM DESCRIPTION                       | AMOUNT CLAIMED    |
|--|-------------------|
| 1. Burn holes in sheets                | \$50              |
| 2. Burn holes in patio furniture       | \$100             |
| 3. Cleaning costs, 2 mattresses; couch | \$357             |
| 4. Broken screen in master bedroom     | \$30              |
| 5. Broken garbage can                  | \$25              |
| 6. Broken patio fencing                | \$20              |
| 7. Broken lounge chair                 | \$30              |
| 8. 10 missing light bulbs              | \$30              |
| 9. Destroyed gardening bag             | \$100             |
| 10. Clothes storage bin                | \$40              |
| 11. Antique cigar box damage           | \$150             |
| 12. Utilities                          | \$109.04          |
| 13. Filing fee                         | \$100             |
| <b>TOTAL</b>                           | <b>\$1,141.04</b> |

In support of her application, the landlord generally submitted that the tenants damaged the rental unit and furnishings beyond reasonable wear and tear and they either smoked or allowed someone to smoke in the rental unit, leaving damage from smoking.

Additionally, the landlord testified to the following:

*Burn holes in sheets –*

The landlord said that the tenants burned holes in the sheets due to smoking. The costs claimed was the usual amount for her sheets, according to the landlord.

*Burn holes in patio furniture –*

The landlord said the tenants damaged the patio furniture cushions, and the amount of her claim is from an online search. The landlord confirmed that the cushions have not been replaced.

*Cleaning costs, 2 mattresses; couch –*

The landlord said that she gave one of the mattresses to her roommate, but due to the smell of smoke in the mattresses and the couch, the tenants are responsible for cleaning. The landlord said that she has thrown out the couch and the claim amount was from a quote she obtained from a professional company.

*Broken screen in master bedroom –*

The landlord said that the tenants bent the screen in the master bedroom during the tenancy.

*Broken garbage can –*

The landlord submitted that the tenants broke the garbage can during the tenancy and the claim amount was the original price.

*Broken lounge chair –*

The landlord said the tenants broke a lounge chair and are responsible for the costs. The claim amount was the cost to replace it.

*Broken patio fencing –*

The landlord said that the tenants damaged the fencing around the patio and that as a result, she removed the fencing and threw it away.

*10 missing light bulbs –*

The landlord said that she noticed ten missing light bulbs after a further inspection of the rental unit, after the original move-out inspection. Therefore, the tenants are responsible for their replacement.

*Destroyed gardening bag –*

The landlord explained that she keeps gardening attire and supplies in a gardening bag at the rental unit, and after the tenancy, she discovered dog feces in the bag and that the bag was ripped. The landlord said she had to throw the contents away, as a result of the feces and damage. The contents included coveralls, shoes, and gardening supplies.

*Clothes storage bin –*

The landlord submitted that the indoor clothes storage bin was brought outside and it was filled with beer and cigarette ashes.

*Antique cigar box damage –*

The landlord submitted that the tenants damaged the antique cigar box given to her by her grandfather. The box has strong sentimental value and she kept dried lavender in it. The landlord said she discovered marijuana residue in the box and scratches.

*Utilities –*

The landlord said that the tenants were responsible for the gas bill and left owing outstanding bills.

The landlord's evidence included a move-in and move-out condition inspection report (CIR), in which the landlord filled in the damage to the furnishings, as listed in her application. The landlord confirmed that she did not list these items during the move-

out inspection, rather she added them later on when she returned to the rental unit, without the tenants present.

The landlord explained that she was nervous about even having the move-out inspection due to the Covid-19 pandemic. The landlord had asked that only one tenant be involved in the inspection, so in this case, the landlord and tenant TB conducted the inspection, while tenant EP sat outside.

During the hearing, the landlord said that she did add all the items involving the damage to the furnishings after the inspection with the tenant, as she wanted to move quickly with the inspection. The landlord said she was overwhelmed by Covid-19 and trusted TB to be honest with her about any damage.

The landlord submitted that she was feeling uncomfortable during the inspection, left the report on the counter and did not see the tenant sign the document.

The landlord admitted it was a very quick walk-through inspection, but that was because she worked at a resort which had been shut down. This left her feeling very nervous.

#### **Tenants' response –**

##### *Burn holes in sheets –*

The tenant denied burning holes in the sheets, as she only slept there the last night of the tenancy. Otherwise, she used her own sheets.

##### *Burn holes in patio furniture –*

The tenant said she does not know anything about the burn holes, and said that the only thing she could think of was it happened when the tenants got together with the neighbours.

##### *Cleaning costs, 2 mattresses; couch –*

The tenant submitted that the rental unit was unclean and dirty when they moved in and they spent a lot of time at the beginning in trying to clean it up. The tenant submitted that the landlord left a large amount of her personal property in the rental unit, which crowded them while they were there.

The tenant submitted that there was no proof that the landlord paid to have the rental unit cleaned, as claimed in her evidence, as they contacted the owner of the company providing the invoice and was told the cleaning was never completed.

The tenant submitted that the landlord confirmed giving one mattress to her roommate and there was no invoice of a replacement mattress or couch. The tenant pointed out the landlord said she got rid of the couch, although it was offered to them.

*Broken screen in master bedroom –*

The tenant said she did not know anything about a broken screen in the master bedroom as she never touched it. The tenant submitted that the screen is not broken, just a little bent, and it was not mentioned during the walk through.

*Broken garbage can –*

The tenant submitted the garbage can was already broken when they moved into the rental unit, and they had to fix it by adding duct tape, in order to open it.

*Broken lounge chair –*

The tenant submitted that the chair was not in good shape, and that it broke the first time they sat on it.

*Broken patio fencing –*

The tenant submitted that the patio fencing was in rough shape when they moved into the rental unit and that item was never mentioned in the inspection report.

*10 missing light bulbs –*

The tenant submitted that she did not understand the claim, and she has not seen the light bulbs. The tenant submitted that the light bulbs would not have burnt out in such a short tenancy.

*Destroyed gardening bag –*

The tenant denied she would ever put dog feces in a gardening bag. The tenant said the patio is where she and their guests visited, so why would she put dog feces in a bag

located on the patio. The tenant said that there was a dog station 25 steps from their patio, with dog poo bags and a garbage can, so that is where any feces would go.

*Clothes storage bin –*

The tenant said they put their empties in there for recycling.

*Antique cigar box damage –*

The tenant said that the cigar box was left in the living room, left unpacked by the landlord. The tenant said she did not know what the cigar box looked like before the tenancy, and she did not take pictures as they did not damage the box.

*Utilities –*

The tenant agreed they would be responsible for the unpaid utilities, as she has previously agreed with the landlord. The tenant explained that the total bill is \$109.04 and goes from April 13 to June 2, a total of 50 days. The daily rate is \$2.18 and as they lived in the rental unit for 45 days, they agreed to pay \$98.10.

Overall, the tenants submitted that the landlord added a long list of damages on the condition inspection report after the inspection and after the tenant left. The tenant submitted that one of the original tenants did not sign the document as shown on the condition inspection report, on the end of tenancy portion on May 28, 2020, as he had flown out of the country several months earlier, as shown by a copy of his flight details.

The tenant referred to a handwritten statement from a neighbour, which stated that at no time did they ever smell smoke coming from the rental unit.

The tenant submitted that they spent days cleaning the rental unit at the beginning of the tenancy, due to the dirty condition after the landlord moved out for the tenants' occupancy. The tenant submitted that they did a thorough clean of the rental unit before vacating.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

In this case, there was no evidence to suggest the rental unit needed cleaning. With the exception of the landlord's claim for the bent screen in the master bedroom and for unpaid utilities, the landlord's claim dealt with alleged damage to the furnishings left by the landlord.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations. Among other things, section 20 of the Residential Tenancy Regulation requires that the condition inspection report contain:



- *the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;*
- *the address of the rental unit being inspected;*
- *the date on which the tenant is entitled to possession of the rental unit;*
- *the address for service of the landlord;*
- *the date of the condition inspection;*
- *a statement of the state of repair and general condition of each room in the rental unit.*

Additionally, the inspection report must contain other required information, such as

- *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;*
- *any other items which the landlord and tenant agree should be included;*
- *a statement identifying any damage or items in need of maintenance or repair;*
- *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;*
- *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:*

.....  
.....  
.....

I find one of the purposes of a condition inspection report is to allow both a landlord and tenant to inspect the rental unit together and have the opportunity to notate their own comments and to allow a tenant to acknowledge their agreement or disagreement with the contents of the report.

In this case, I find the landlord's report from the end of the tenancy was deficient as it did not contain the required information. The attending tenant, TB, did not sign or date the document and it did not contain a listing of state of repair and general condition of each of the rooms or furnishings, among other omissions, noted during the inspection.

Of greater importance is the undisputed evidence that the landlord unilaterally altered, or changed, the inspection report after the inspection with the tenant was concluded, and the tenant had left the rental unit, in the days following.

The added items were the listing of the items in the landlord's monetary claim. The tenant did not have a chance to review the document and add her comments or disagreements to the inspection report.

I find the unilateral additions to the move-out condition inspection report makes the report a false document. I therefore find the false document invalidates the report, and as a result, I find it unreliable and not credible.

Apart from the now invalidated condition inspection report, I find the landlord failed to note on the move-in inspection report the condition of the furnishings and did not provide photographic evidence of the condition of the furnishings at the beginning of the tenancy.

The tenants disputed they damaged the furnishings and without further proof, I find the landlord's claim for damage to the furnishings fails.

As noted, the landlord failed to address whether the master bedroom screen was bent or damaged on the move-out inspection report during the move-out inspection and as the tenant denied damaging the screen, I find the landlord's claim for the alleged damage to the master bedroom screen fails.

Due to the above findings, I find the landlord submitted insufficient evidence to support her monetary claim for damage to the furnishings and rental unit, and dismiss her claim for those items.

As to the landlord's claim for unpaid utilities, the tenants agreed that they owed a prorated amount for utilities during the time they lived there, or \$98.10. I therefore grant the landlord a monetary award of \$98.10. I do not award the landlord recovery of her filing fee of \$100, due to her mostly unsuccessful application.

I direct the landlord to deduct the amount of her monetary award of \$98.10 from the tenants' security deposit of \$825, and order the landlord to return the amount remaining, or \$726.90.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$726.90, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### Conclusion

The portion of the landlord's application for damage to the furnishings and rental unit and for recovery of the filing fee is dismissed, without leave to reapply.

The landlord's claim for unpaid utilities is granted and she is granted a monetary award of \$98.10 for unpaid utilities.

The landlord is ordered to return the remaining portion of the tenant's security deposit of \$726.90, immediately, and the tenant is granted a monetary order in that amount, in the event the landlord does not comply with this order.

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 31, 2020

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Residential Tenancy Branch