

## **DECISION**

Dispute Codes      MND MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage or loss and to recover the cost of the filing fee for this application from the tenant.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 4, 2009 which was confirmed by the tenant. The tenant was deemed to be served the hearing documents on April 9, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for damage or loss.
- Whether the landlord is entitled to a Monetary Claim under section 72 of the *Act* to recover the cost of the filing fee.

### Background and Evidence

The tenancy began June 1, 2008 and ended December 31, 2008 with rent payable of \$2,185.00 on the first of each month. The tenant paid a security deposit of \$1,092.50. A

move-in condition inspection report was completed at the start of the tenancy and although a move-out inspection was initiated, the report was never completed or signed by both parties.

Landlord (2) testified that on December 30, 2008 he scheduled a time with the tenant to conduct the move out inspection on December 31, 2008 at 11:00 a.m. but that the tenant called him the morning of December 31, 2008 and requested that the inspection be held after 2:30 p.m. on December 31, 2008 as the carpet cleaners were running late with cleaning the carpets. Landlord (2) stated that he agreed to the later inspection but that when he tried to go through the unit with the tenant her cell phone kept ringing and finally the tenant told him that she had to leave. Landlord (2) said that he told the tenant that he would call her to reschedule the walk through for early January. Landlord (2) testified that he called the tenant on either January 3<sup>rd</sup> or January 4<sup>th</sup>, 2009 to schedule an inspection for January 5, 2009 but that the tenant requested that it happen on January 6, 2009. Landlord (2) stated that the walk through did take place on January 6, 2009 at 10:00 a.m. at which time landlord (2) point out the deficiencies to the tenant.

The tenant testified that a move-out inspection was completed on December 31, 2008 and that she did return again in early January 2009 to do another walk through. The tenant stated that landlord (2) did not have the move-out inspection form during either inspection walk through, that landlord (2) never asked her to sign the move-out inspection report, and that during the second walk through inspection the tenant stated that she was upset with all of the little things the landlord was pointing out as deficiencies for which he wanted money for, so the tenant told landlord (2) she would see him at arbitration and left.

Landlord (2) testified that he did have the move-out inspection report with him during each walk through but that he didn't complete the form until after the tenant had left. Landlord (1) testified that his father, landlord (2) looks after the rental unit for him and completed all of the repairs. Landlord (2) stated that he was in his 70's and that he

doesn't work a full day and that at his age it takes him longer to complete the work. Landlord (1) has submitted the following monetary claim for damage and loss:

- 1) Entrance Door Damage \$140.00 – The landlord provided pictures which shows that the entrance door had scuff, black, marks on the door. The landlord has claimed 3.5 hours @ \$40.00 per hour.
- 2) Holes in Drywall left from curtain rods installed/removed \$200.00 – The landlord provided pictures which show 38 large holes left in the drywall after the tenant had installed and then removed several curtain rods throughout the rental suite for 5 hours @ \$40.00 per hour.
- 3) Repair nail holes, marks and scrapes in Drywall \$200.00 - The landlord provided a couple of pictures which displayed some nail holes in walls as a result of pictures being hung and some scuff marks on base boards and trim. The landlord has claimed 5 hours @\$40.00 per hour.
- 4) Rug stains \$50.00 – The landlord is claiming \$50.00 to remove two stains in the carpet. Landlord(2) testified that the tenant had a professional carpet cleaner steam clean the carpets but that the cleaner only used water. Landlord (2) stated that he had to use stain remover to get the carpet cleaned.
- 5) Cleaning appliances \$200.00 – The landlord has claimed 5 hours @\$40.00 per hour to clean the fridge, top of stove, inside the dishwasher, remove lint from dryer screens, and wipe out the washing machine. The landlord provided pictures showing the lint removed from the dryer and the inside of the dishwasher which shows that the sides of the dishwasher were not wiped clean.
- 6) Cleaning top to bottom of rental unit \$480.00 – The landlord claims 6 hours at \$40.00 per hour each for two people to clean the rental unit from top to bottom.
- 7) Patio Area – Dog Run cleaning \$120.00 – The landlord has provided pictures in support of their claim that they were required to clean up dog feces from the deck/dog run area which amounted to 4 ice cream pails full of dog feces. The landlord has claimed 3 hours @ \$40.00 per hour.
- 8) Patio Door cleaning and repair \$60.00 – The landlord has claimed 1.5 hours @ \$40.00 per hour to sand, stain, varnish and paint the patio door step.

- 9) Cork floor damage \$320.00 – The landlord claims that it took 8 hours @ \$40.00 to fill, stain and clean the cork floor.
- 10) Patio Blind Replacement \$196.00 – The landlord states that the patio blind will not pull down and that the chain is missing so the landlord replaced the blind and is claiming \$196.00.
- 11) Fridge Door Damage \$754.11 – Landlord(2) testified that he felt the tenant had changed the fridge door as there was a couple of dents on the door and it appeared that the screws had been tampered with. The landlord provided a quote to replace the fridge door @ \$754.11 and testified that the door has not yet been replaced and that the issues noted about the door are not interfering with the operation of the fridge.
- 12) Kitchen counter crack \$100.00 - The landlord claims that there is a crack in the granite counter top and is requesting \$100.00 for the damage
- 13) Kitchen sink cleaning \$50.00 – The landlord states that the left side of the sink was stained and that he was not able to get it cleaned with normal cleaning
- 14) Dryer Damage – Landlord (2) testified that the tenant left a large amount of lint in the dryer screens which would ultimately cause damage to the dryer. There was no dollar amount claimed for this item.
- 15) Ensuite Bathroom Shower - \$125.00 – The landlord testified that there was dirt left in the bottom of the shower and what appears to be scratches from a dog on the shower approach and is claiming \$125.00.
- 16) Booking of Elevator for Move Out \$100.00 – The landlord provided evidence in support of his claim for \$100.00 which was payable to the Strata Corporation for booking the elevator at time of move-out.
- 17) Utilities \$160.99 – The landlord provided evidence that he was billed \$160.99 from the City in relation to the tenant failing to pay utilities.

The tenant testified that when landlord(2) conducted the move-out walk through inspection that he said things were looking fine and that it wasn't until the second walk through in early January when he started pointing out a lot of little deficiencies which is

when the tenant told the landlord she would see him at arbitration. The tenant provided testimony in response to the landlord's claims as follows:

- 1) Entrance Door Damage– The tenant confirmed that there were black smudges on the exterior door and that there was not any signification damage, that the landlord could have wiped the door clean with using some Fantastik and a rag.
- 2) Holes in Drywall left from curtain rods installed/removed -The tenant testified that she did have curtain rods and curtains installed around the rental unit and that she removed the curtain rods when she moved out. The tenant stated that the landlord did not say she couldn't install the curtain rods.
- 3) Repair nail holes, marks and scrapes in Drywall – The tenant stated that she did have pictures hung on the walls but that it was just normal nail holes and that the scrapes were from normal wear and tear.
- 4) Rug stains – The tenant testified that she hired a professional carpet cleaner and that there were no stains left in the carpet that she was aware of.
- 5) Cleaning appliances – The tenant admitted that she did not wipe down the sides of the dishwasher but that she did clean all of the other appliances such as the fridge and stove. The tenant states that the washer and dryer were clean and that she only washed normal clothes in them and not dog articles. The tenant states that the landlord did not show her the lint trap that was located in the pipe above the dryer. The tenant stated that the lint trap in the dryer was cleaned regularly and that she must have forgotten to remove the lint the last time she used the dryer.
- 6) Cleaning top to bottom of rental unit – The tenant testified that she cleaned the rental unit and even hired a professional carpet cleaner.
- 7) Patio Area – Dog Run cleaning - The tenant testified that she did not clean out the dog run as the patio was covered in snow. The tenant admits that there would have been dog feces on the deck.
- 8) Patio Door cleaning and repair – The tenant states that there was nothing wrong with the patio door other than it may have needed a wipe on the outside after the snow melted.

- 9) Cork floor damage – The tenant confirmed that it was cork flooring but that there was no damage to the floor.
- 10) Patio Blind Replacement – The tenant did not testify to the landlord's claim for a replacement blind.
- 11) Fridge Door Damage – The tenant testified that the fridge door was dented at the time she took possession of the rental unit and as noted on the move in inspection report. The tenant claims that there was no additional damage done to the fridge, over and above normal wear and tear and that she did not remove the fridge door and replace it with a different one.
- 12) Kitchen counter crack - The tenant testified that the kitchen counter is granite and that if she would have cracked the counter it would have damaged the entire counter as it is one big slab. The tenant states that the crack would have had to have happened when the supplier cut the counter top to size at the time it was installed.
- 13) Kitchen sink cleaning - The tenant did not testify to the issue about a dirty sink.
- 14) Dryer Damage – The tenant stated that there was nothing wrong with the dryer and that the lint did not cause any damage.
- 15) Ensuite Bathroom Shower – The tenant stated that the side of the shower was not damaged as one would step over the edge and that her dogs have never been in that shower. The tenant states that the shower floor may have been dirty as she may have forgotten to clean it but that there were no scratches on the shower floor.
- 16) Booking of Elevator for Move Out \$100.00 – The tenant did not provide testimony on the cost of booking the elevator.
- 17) Utilities \$160.99 – The tenant testified that all of the utilities were in her name and that she was responsible for the utilities until the end of the tenancy.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant

pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the landlords right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Both parties testified to the fact that the rental unit was brand new and that the tenant was the first tenant to occupy the rental unit. The *Residential Tenancy Policy Guideline* provides a listing of the useful life of building, materials, painting and will be utilized during my assessment of any loss or damage awarded in this decision. I will also take into consideration landlord (2)'s statement about his age and the amount of time he works during a day in consideration with the amount of labor charged for this claim.

Both parties acknowledged completing the move-in inspection report while there is contradictory testimony in relation to why the move-out inspection report was not completed in the presence of both parties, and when the form was actually completed.

A factor in my considerations is the credibility of the landlords and the tenant. In assessing the credibility of these parties I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant, specifically landlord (2) not having the actual form with him at the time the move out inspections were conducted, and that he completed the form afterwards, to be highly probable given the conditions that existed at the time. Considered in its totality, I favor the evidence of the Tenant over the Landlord with relation to when the actual form was completed.

With respect to the testimony provided on when and how the move-out inspections happened, I favor the evidence of the Landlord over the Tenant whereby I find that the landlord's recollection of how evasive and busy the tenant was during the first walk-through inspection and how upset the tenant was during the second walk through when the landlord was pointing out deficiencies.

I find that the landlord has contravened section 35 of the *Act* by failing to complete the move-out inspection report and by failing to forward a copy of that report to the tenant prior to submitting it as evidence to this hearing. Although the landlord has contravened this section of the *Act*, I find that this contravention does not preclude the landlord from proving that damage existed at the end of this tenancy, and that the damage was caused by the tenant's actions and or neglect.



Based on the testimony, documentary evidence, and aforementioned with respect to the landlord's claim for damage, I find as follows:

- 1) Entrance Door Damage – The tenant admitted that there were black scuff marks on the doors as evident by the pictures supplied by the landlord. Based on the above I find that the landlord has met the test requirements to claim damage or loss in the amount of ½ hour at \$20.00 per hour for an amount of \$10.00. I note that while the landlord claims to have used stain and other products, there were no receipts to prove the purchase of such items.
- 2) Holes in Drywall left from curtain rods installed/removed – The tenant admitted to installing and removing curtain rods throughout the rental unit as supported by the landlord's picture evidence. Curtain rods are considered a permanent fixture and as is the case with any permanent fixture, if removed the remaining damage needs to be removed or repaired. Based on the above I find that the landlord has met the test requirements to claim damage or loss in the amount of 5 hours @ \$20.00 per hour for a total amount of \$100.00. I note that this amount is in reference to labour to conduct the repairs and nothing for materials or paint as there was no documentary evidence provided in support of these costs and there is no leave to reapply for these items.
- 3) Repair nail holes, marks and scrapes in Drywall - The landlord provided evidence that there were some nail holes in the wall while the tenant contents there was a normal amount of nail holes required to hang some pictures throughout the rental unit and that there were a few scrapes from normal wear and tear. The *Residential Tenancy Policy Guidelines* stipulate that unless the landlord instructs otherwise, if the tenant hangs pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. Based on the aforementioned I

hereby dismiss the landlord's claim of \$200.00 without leave to reapply.

- 4) Rug stains – Both parties testified to the fact that the tenant had a professional carpet cleaner steam clean the carpets at the end of the tenancy. The landlord is claiming \$50.00 to remove two stains in the carpet that remained after the professional cleaning. While the landlord testified that he had to use a different product to get the carpet clean he has not provided an invoice to substantiate his claim for this purchase and has not proven the test above for the actual cost to remove the stains. Based on the aforementioned I hereby dismiss the landlord's claim without leave to re-apply.
- 5) Cleaning appliances – The tenant testified that she cleaned the appliances but that she forgot to wipe the outside edge of the dishwasher. The tenant also stated that she wasn't aware of the second dryer lint collector that was located in the pipe above the dryer. The landlord is claiming 5 hours to clean these appliances which I have found to be excessive based on the age of the rental unit and the condition of the appliances as shown in the pictures that the landlord supplied as evidence. I also note that the landlord did not provide a picture of the stove and oven for which he is claiming an amount to clean. While I do find that there was some minor wiping of appliances and that there was lint present in the dryer, I hereby award the landlord ½ hour of cleaning at \$20.00 per hour for a total amount of \$10.00.
- 6) Cleaning top to bottom of rental unit – I find that there is no documentary evidence to support the landlord's claim that two people had to spend an additional 6 hours cleaning the rental unit, over and above the other cleaning items claimed. I hereby dismiss the landlord claim of \$240.00 for cleaning without leave to re-apply.
- 7) Patio Area – Dog Run cleaning – The landlord has provided pictures in support of their claim and the tenant admitted that she was not able to clean up the dog feces from the deck as it was covered under snow.

I hereby approve the claim for 3 hours @ \$20.00 per hour for a total amount of \$60.00.

- 8) Patio Door cleaning and repair – I find that the evidence supplied by the landlord does not support their claim that the patio door needed additional cleaning and repair and I hereby dismiss the landlord's claim without leave to re-apply
- 9) Cork floor damage – The landlord testified that the cork floor was damaged and the tenant testified that it was not. There was no documentary evidence to support the landlord's claims that the floor was damaged, no evidence that products were purchased to repair the floor, and in the presence of contradictory testimony, I hereby dismiss the landlord's claim without leave to reapply.
- 10) Patio Blind Replacement – The landlord has claimed an amount to replace a patio blind but has not provided any documentary evidence in support of the cost to purchase and install the blind. I find that the landlord has not met the test for damages and I hereby dismiss the landlord's claim without leave to reapply.
- 11) Fridge Door Damage – The move in inspection report lists that the fridge door is dented. The landlord did not provide picture evidence of the damaged door prior to the tenant taking occupancy and provided only a picture which was taken at the end of the tenancy. The tenant testified that the door was damage at the onset and that anything further was normal wear and tear. In the absence of clear evidence as to the condition of the fridge door before and after I cannot allow a claim for a dent or dents to the fridge door when it is a item that is listed on the move-in inspection report. I hereby dismiss the landlord's claim without leave to reapply.
- 12) Kitchen counter crack - Other than the landlord's statement there was no documentary evidence in support of the landlord's claim that the counter was cracked. I find that the landlord has failed to prove the

test for damages to the counter and hereby dismiss their claim without leave to reapply.

13) Kitchen sink cleaning – The landlord did not submit evidence that the sink was dirty requiring additional cleaning or cleaning products and so I hereby dismiss the landlord’s claim without leave to re-apply.

14) Dryer Damage – The landlord testified that the dryer “may have been” damaged if it was turned on with lint in the lint traps. The landlord has not claimed a dollar amount for this item nor has he provided proof that the dryer was damaged. I hereby dismiss the landlord’s claim without leave to re-apply.

15) Ensuite Bathroom Shower – The landlord testified that there was dirt left in the bottom of the shower and the landlord stated there appears to be scratches from a dog on the shower floor and approach. I find that the landlord has proven that the shower was left dirty, based on the picture evidence, and allow the landlord ¼ of an hour at \$20.00 for cleaning the shower floor for a total of \$5.00. I find that the landlord has not proven that there are dog scratches on the shower floor or approach and by his own testimony there was no work done to repair the shower other than cleaning it. I dismiss any further claims for shower repair.

16) Booking of Elevator for Move Out – I find that the landlord has proven his loss of \$100.00, the amount the landlord was required to pay on behalf of the tenant, to the strata corporation, for booking the elevator for move-out and hereby allow his claim.

17) Utilities – The tenant testified that she was responsible for utilities during her tenancy and that these utilities were in the tenant’s name. The landlord has met the test for loss and I hereby approve the landlord’s claim of \$160.99 for utilities.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that the landlord is entitled to recover the filing fee from the tenant as follows:

Entrance Door Damage	\$10.00
Holes in Drywall left from curtain rods installed/removed	100.00
Cleaning appliances	10.00
Patio Area – Dog Run cleaning	60.00
Ensuite Bathroom Shower	5.00
Booking of Elevator for Move Out	100.00
Utilities	160.99
Filing fee	50.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$495.99</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$495.99. The order must be served on the respondent and is enforceable through the Provincial Court as an order of

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: May 25, 2009.

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Dispute Resolution Officer