



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant acknowledged receiving all of the evidence submitted by the Landlord. All of the evidence submitted by the Landlord was considered, with the exception of the VHS tape. The Tenant stated that he has been unable to view the VHS tape as he does not have access to a VHS player. As the Tenant stated that he has been unable to view the VHS tape, I declined to consider it in evidence.

Residential Tenancy Branch Rules of Procedure require parties to provide suitable playback equipment at a hearing. As this was a teleconference and the parties were not able to view the recording during the hearing and the Landlord did not take steps to ensure the Tenant could view the recording remotely, I find that it would be prejudicial to the Tenant to consider the recording at the hearing.

In determining that the VHS recording should be excluded, I was influenced, in part, by the fact that the Landlord had other means of establishing the condition of the rental unit. The Landlord used still photographs and an informal condition inspection report to establish the condition of the rental unit at the end of the tenancy. The Landlord could have used evidence of this nature to establish the condition of the rental unit at the start of the tenancy. I specifically note that the Landlord had an obligation, pursuant to section 23(1) of the *Act*, to complete a Condition Inspection Report at the start of the tenancy. A Condition Inspection Report that was completed at the beginning of the tenancy in accordance with the *Act* would have clearly established the condition of the rental unit at that time.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit and for loss of revenue; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 24, 2008; that the Tenant was required to pay monthly rent of \$350.00; and that the tenancy ended on May 30, 2010 or May 31, 2010.

The Landlord is seeking compensation, in the amount of \$163.81 for cleaning the rental unit, which included \$122.50 for wages paid to the person who cleaned the rental unit; \$41.31 in cleaning supplies. The Landlord submitted receipts to show that \$41.31 worth of cleaning supplies were purchased. The Landlord submitted photographs of the interior of the rental unit that the Landlord contends support his allegations that the rental unit needed cleaning.

The Witness stated that she spent approximately 12.25 hours cleaning the rental unit between June 04, 2010 and June 08, 2010, for which she was paid \$122.50. She stated that she has viewed photographs submitted in evidence and that they represent the condition of the rental unit at the end of this tenancy.

The Tenant stated that the rental unit was cleaned at the end of the tenancy, although he agrees that the photographs submitted in evidence by the Landlord accurately represent the condition of the rental unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$171.00 for painting the rental unit, which included approximately 7.5 hours for time spent painting the unit and \$30.90 in paint supplies. The Landlord submitted receipts to show that painting supplies, in the amount of \$24.90, were purchased.

The Landlord submitted photographs of the interior of the rental unit that the Landlord contends support his allegations that the rental unit needed painting. The Landlord stated that the rental unit was newly painted shortly before the beginning of this tenancy. No evidence was admitted in this hearing that corroborates the Landlord's claim that the rental unit was newly painted at the beginning of the tenancy.

The Tenant stated that the rental unit was not newly painted at the beginning of the tenancy, although he agrees that the photographs submitted in evidence by the Landlord accurately represent the condition of the rental unit at the end of the tenancy.

The Landlord is claiming compensation, in the amount of \$100.00, for replacing the front door of the rental unit. He stated that the Tenant forced the door open and that it was

replaced by the Landlord prior to the end of this tenancy. The Landlord submitted a receipt, in the amount of \$80.00, for a used door. He stated that he spent one hour installing the door and locks, for which he is claiming compensation of \$20.00. The Landlord submitted a photograph of the damaged door frame that occurred when the Tenant forced the door open.

The Tenant stated that the front door of the rental unit was frozen shut at some point during this tenancy and that he had to force it open to exit the rental unit.

The Landlord is claiming compensation for replacing the bathroom door. He stated that the bathroom door, which is a vinyl folding door, was in good condition at the beginning of the tenancy and that it was held together by duct tape at the end of the tenancy. The Landlord submitted a receipt, in the amount of \$40.00, for a used door. The Landlord submitted a photograph of the damaged door.

The Tenant stated that the bathroom door was old and slowly fell apart during this tenancy.

The Landlord is claiming compensation, in the amount of \$12.00, for replacing a set of blinds. The Landlord and the Tenant agree that one set of blinds were missing from the rental unit at the end of the tenancy. The Landlord submitted a receipt for the blinds, which is not legible. The Landlord stated that his copy of the receipt indicates that the blinds cost \$12.00.

The Landlord is claiming compensation, in the amount of \$8.00, for replacing a smoke detector. The Landlord and the Tenant agree that the smoke detector was missing from the rental unit at the end of the tenancy. The Landlord submitted a receipt for the smoke detector, in the amount of \$7.99.

The Landlord is claiming compensation, in the amount of \$3.50, for replacing three light bulbs. The Landlord and the Tenant agree that three light bulbs burned out during this tenancy and were not replaced. The Landlord did not submit a receipt for the light bulbs.

The Landlord is claiming compensation, in the amount of \$135.00, for replacing the fridge in the rental unit. The Landlord and the Tenant agree that the freezer door on the fridge was broken during this tenancy. The Tenant stated that the freezer door broke as a result of the freezer repeatedly freezing and becoming stuck. The Landlord stated that light in the interior of the fridge was broken. The Tenant stated that the light in the fridge did not work at the beginning of the tenancy. The Landlord estimates that the fridge was ten years old and that he replaced it with a used fridge, for which he submitted a receipt, in the amount of \$125.00. The Landlord stated that he replaced the fridge because he was unable to find parts to repair the fridge. The Landlord submitted a receipt, in the amount of \$10.00, for the cost of disposing of the old fridge.

The Landlord is claiming compensation, in the amount of \$200.00, for loss of revenue. The Landlord stated that he had a new tenant for the rental unit who was prepared to move into the rental unit on June 01, 2010. He stated that the new tenant was not able to move into the rental unit due to the condition of the rental unit at the end of this tenancy, and that that tenant elected to move elsewhere. He stated that he advertised the rental unit on June 17, 2010 and that he found a different tenant, who moved into the rental unit on, or about, June 20, 2010.

### Analysis

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 a damage or loss occurred; 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.

After hearing the testimony of all parties in attendance regarding the cleanliness of the rental unit, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs that were submitted in evidence. In my view, these photographs clearly show that the rental unit required cleaning and that it would likely take approximately twelve hours to clean the rental unit.

As the Tenant failed to leave the rental unit in reasonably clean condition, I find that the Landlord is entitled to compensation for the cost of cleaning the unit which, in these circumstances, includes \$122.50 for wages paid to the person who cleaned the rental unit and \$41.31 for cleaning supplies.

After hearing the testimony of both parties in regards to painting the rental unit, I find that the Landlord has failed to establish that the Tenant was obligated to paint the rental unit at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as photographs or a Condition Inspection Report that corroborates the Landlord's claim that the walls were newly painted at the beginning of the tenancy or that refutes the Tenant's statement that the walls were not in new condition at the beginning of the tenancy. As the Landlord has not established that the condition of the walls were significantly different at the end of the tenancy than they were at the beginning of the tenancy, I cannot conclude that the Tenant is required to paint the rental unit. On this basis, I dismiss the Landlord's claim for compensation for painting the rental unit.

After hearing the testimony of both parties in regards to the damage to the front door, I find that the Tenant damaged the front door of the rental unit and that he failed to comply with section 32(3) of the *Act* when he failed to repair that damage. Even if I were to accept the Tenant's testimony that he was unable to open the door because it

was frozen shut, I find that there were more reasonable methods of opening the door than opening it with force. I therefore find that he was obligated to repair the damage that he caused.

As the Tenant failed to repair the broken door, I find that the Landlord is entitled to compensation for the cost of repairing the door which, in these circumstances, is \$80.00 for the cost of the door and \$20.00 for the time the Landlord spent replacing the door.

After hearing the testimony of both parties in regards to the damaged bathroom door, I find that the Landlord has failed to establish that the Tenant was obligated to repair the bathroom door at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photograph of the door that was submitted in evidence and by the Landlord's evidence that the door is vinyl. In my view the bathroom door is not of high quality; is not particularly suited for a bathroom door that is regularly opened and closed; and it does not appear to be a new door. Based on the type of damage depicted in the photograph, I accept that this door broke as a result of regular and prolonged use, rather than negligence or abuse. I find that the damage to the bathroom door constitutes regular wear and tear. As section 37(2) of the *Act* does not require tenants to repair damage that results from regular wear and tear, I dismiss the Landlord's application for compensation for the bathroom door.

Based on the Tenant's acknowledgement that a set of blinds were missing from the rental unit at the end of the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the blinds in the rental unit. As the Tenant failed to leave the blinds in the rental unit, I find that the Landlord is entitled to compensation for replacing them which, in these circumstances, is \$12.00.

Based on the Tenant's acknowledgement that the smoke detector was missing from the rental unit at the end of the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the smoke detector in the rental unit. As the Tenant failed to leave the smoke detector in the rental unit, I find that the Landlord is entitled to compensation for replacing it which, in these circumstances, is \$7.99.

Based on the Tenant's acknowledgement that he failed to replace three light bulbs that burned out during this tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace the bulbs. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing light bulbs. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that he paid \$3.50 to replace the bulbs. On this basis, I hereby dismiss the Landlord's claim for compensation for replacing three light bulbs.

Based on the Tenant's acknowledgement that the freezer door on the fridge was broken during this tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act*

when he failed to leave the door in its original condition, although he did repair it with duct tape. As the Tenant failed to leave the fridge in its original condition, I find that the Landlord is entitled to compensation for repairing the fridge. I find that it was reasonable for the Landlord to replace the fridge with a used fridge, as it would likely have cost more to repair the damage. On this basis, I find that the Landlord is entitled to recover the \$125.00 he paid to replace the fridge and the \$10.00 that he paid to dispose of the old fridge.

Section 7(2) of the *Act* requires landlords to take reasonable steps to minimize the damage or loss that flows from a tenant's failure to comply with the *Act*. In my view this rental unit could have been cleaned; the smoke detector could have been replaced; and the unit could have been made suitable for a new tenant within six hours, with the reasonable effort of two people. I base this decision on the Witness' statement that she spent approximately twelve hours cleaning the rental unit. I find that the need to replace, the blinds, and the fridge did not negate the Landlord's ability to rent this unit on June 01, 2010.

I therefore find that the Landlord did not take reasonable steps to mitigate any loss of revenue that resulted from the Tenant's failure to comply with section 37(2) of the *Act*. On this basis, I dismiss the Landlord's claim for compensation for loss of revenue for a portion of the month of June of 2010.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$468.80, which is comprised of \$418.80 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$468.80. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 *Residential Tenancy Act*.

Dated: November 25, 2010.

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Dispute Resolution Officer