



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for damage to the unit site or property, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on September 21, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and the Tenants in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are there damages to the unit site or property?
3. Is the Landlord entitled to compensation for unpaid rent and for damages or loss and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 1, 2002 as a month to month tenancy in conjunction with an employment contract. Rent was \$500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$250.00 and a key deposit of \$40.00 on May 1, 2001 while in a previous unit. The tenancy ended on August 31, 2010.

The Landlord said that the Tenant left the unit in a dirty condition and did not pay a late fee of \$25.00 on the August, 2010 rent. The Landlord said they had a two different condition inspection reports. The Landlord submitted one report in which the move out condition inspection report was signed and the Security Deposit Statement was completed showing the Tenant was due \$290.00 for the security deposit and \$16.32 of accrued interest on the security deposit. The balance due to the Landlord on the report

was \$0.00. The Landlord said the Tenant completed this section of the report, but she said she was aware of what he had written. The Landlord continued to say that she did not object to the report as she said she was unsure of the costs to clean the unit; therefore she said nothing to the Tenant. This report shows the move in condition of the rental unit as fair, but there is no date nor signatures on the move in part of the report. The Landlord continued to say they had a second condition inspection report that showed the move in condition inspection report was dated and signed. The Landlord said they had not submitted this second report in the evidence package. The Tenants said this second report was a move in condition report from a different unit that they lived in prior to this unit.

The Landlord continued to say that the unit was left in a dirty condition partially due to smoking in the unit and partially due to the Tenants not cleaning the unit prior to move out. The Landlords said they are claiming the following costs to clean and repair the rental unit.

Replace drapes	\$ 600.00
Cleaning (50 hours @ \$15.00 per hour)	\$ 750.00
Special Cleaning supplies	\$ 550.00
Replace carpet	<u>\$2,850.00</u>
Subtotal	<u>\$4,750.00</u>

In addition the Landlords said they are claiming for a late rent payment fee in the amount of \$25.00, which the Landlords said is in the tenancy agreement. The Landlords also said they did not submit the tenancy agreement with the evidence package. The Tenants said there is no late payment fee of \$25.00 written into the tenancy agreement.

The Tenants said they cleaned the unit, vacuumed the carpet and removed all their belongings and any garbage when they moved out. They said that they did smoke in the unit as smoking was allowed in this unit. The Tenants they said they left the unit in a comparable condition as when they moved into it 8 years ago. The Tenant said there was no move in condition inspection report done on this unit. The Tenant continued to say they met with the Landlord on August 31, 2010 and completed the move out condition inspection report and the Security Deposit Statement. They said they do not believe they owe the Landlords any money for cleaning or repairs to this unit. The Tenants said the Landlords have been renovating unit as tenants moved out and they thought the Landlord would do the same to this unit as it had not been painted or renovated in over 10 years.

The Landlord concluded by saying this unit was left in an extremely dirty condition which was well beyond normal wear and tear. They said it was mainly due to smoking and they also said the Tenants did not clean the unit to a reasonable standard when they left. The Landlord submitted 54 pictures of the unit to show the condition of the unit.

## Analysis

Sections 23 and 24 explain the requirements and consequences for landlords and tenants with respect to move in condition inspection reports. They are as follows:

### **Condition inspection: start of tenancy or new pet**

**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 regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

### **Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The accepted evidence as provided to the hearing indicates a move condition inspection report on the rental unit was not completed, therefore the Landlord's claim on the Tenant's security deposit is extinguished. I dismiss the Landlords application to retain the Tenant's security deposit.

Section 37(2) indicates the Tenant's responsibility when vacating a rental unit

### **Leaving the rental unit at the end of a tenancy**

**37** (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

Landlord's that have rental units that are designated as smoking unit must realize that the units will have smoke damage or staining as a result of allowing that activity. To determine would is reasonably clean in a smoking unit may be very difficult as many new tenants would expect the unit to be painted if the prior tenant was a smoker. The Tenant said they cleaned the unit, vacuumed the carpets and removed all their belongings and any garbage in the unit. I have viewed the photographs and I find outside of the smoke straining the Tenants left the unit reasonable clean. With regards to the smoke staining, the unit was a smoking unit and it is not possible to determine how much of the staining was a result of the Tenants. As well, since the unit was not

recently renovated prior to the Tenants moving in and there is no evidence of the condition of the unit when the Tenants moved in it is impossible to establish the amount of damage or the amount of smoke staining to the unit while the Tenant's were there.

In addition since the unit has not been renovated in over 10 years therefore I find the general condition of the unit including the paint the drapes and the carpet were at the end of their economic life, so to charge the Tenants for the full value of the repairs and renovations is not justified, I find for the Tenant's and dismiss the Landlord's claims for new drapes, carpets and for cleaning and painting the rental unit.

The Landlord has also claimed for a late rent payment for August, 2010 in the amount of \$25.00. There was contradictory testimony given by the Landlords and the Tenants and as the tenancy agreement was not submitted in the evident package it is a situation of the Landlords' word against the Tenants' word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent and that burden of proof is not met. I find that the burden of proof is not met by the Landlord and the claim for the late rent payment fee of \$25.00 is dismissed.

As the Landlords have been unsuccessful in this matter their request to recover the filing fee from the tenant is dismiss and the Landlord is to bear the cost of this application.

Conclusion

I dismiss the Landlords' application with leave to reapply.

I order the Landlord to return the Tenant's security deposit of \$290.00 with accrued interest of \$16.32 as agreed to on the move out condition inspection dated August 31, 2010, in the total amount of \$306.32 forth with.

A Monetary Order in the amount of \$306.32 has been issued to the Tenant. A copy of the Orders must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 19, 2011.

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Residential Tenancy Branch