



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for damages and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This fixed term tenancy began July 1, 2011 with monthly rent of \$1265.00 and the tenant paid a security deposit of \$632.50. The fixed term tenancy has an end date of June 20, 2012 however the tenant gave the landlord notice and vacated the rental unit September 30, 2011.

The landlord stated that the tenant broke the fixed term tenancy and that on September 30, 2011 a move out inspection was completed with the tenant. The landlord states that during the inspection the tenant did not agree with the landlord's notations of damage.

The landlord stated that she and the tenant returned to the rental office and the landlord placed the move out condition inspection report on her desk while she spoke to another tenant and during this time the tenant left. The landlord stated that after the conversation with the other tenant was completed she realized that the move out condition report was missing from her desk. The landlord then reviewed security camera footage and saw the tenant leaving the building with what the landlord believes is the move out condition inspection report in her hand.

The tenant testified that she did not take the move out condition inspection report from the landlord's desk and stated that as the suite was clean and in good condition, the landlord having the report would have been to the tenant's favour. The tenant did not comment as to how the move out condition inspection report would have influenced this hearing had the move out condition inspection report been unfavourable towards the tenant.

The landlord stated that the tenant broke the fixed term lease, damaged the laminate flooring, damaged a wall and did not thoroughly clean the rental unit. The landlord stated that the damage to the floor, dirty window sills and stove are clearly noted in the photos on the CD that the landlord has entered into evidence.

The landlord stated that the laminate flooring was new prior to the start of this tenancy in July 2011 and that the suite had been freshly painted and new blinds installed. The landlord stated that the tenant had badly scratched the laminate floor in a number of places, the stove top and stove top trays were very dirty, there were dirty marks on the walls as well as dime sized holes that had not been repaired and thick dust was present on numerous surfaces.

The landlord's caretaker testified that at the start of the tenancy he made 2 trips to the rental unit as the tenant was not happy with the condition of the doors. The caretaker stated that at the end of the tenancy he spent 2 hours cleaning the rental unit and that while in the rental unit he observed damage to the newly installed laminate floors and dirty and damage to the freshly painted walls.

The tenant testified that the floor had been damaged prior to her taking possession of the rental unit and suggested that perhaps the painters had scratched the floor when preparing the suite. The tenant stated that she had cleaned and that when she and the landlord were completing the move out inspection that the landlord had marked the condition of everything as 'good' in the rental unit. The tenant stated that her husband was going to repair the holes in the wall but elected to have the landlord do the repair for a fee.

The tenant stated that she did not sign an addendum that states a liquidated damages fees of \$250.00 for breaking the lease. The landlord maintains that an addendum was signed and will provide a copy of this document.

The landlord in this application is seeking \$1450.00 compensation for the following:

Repair of flooring	\$844.45
Cleaning costs	\$90.00
Breaking of lease	\$250.00
<b>Total claim</b>	<b>\$1284.45</b>

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages and cleaning costs.

And in the absence of the move out condition inspection report, I accept the landlord's photographic evidence and witness testimony regarding the condition of the rental unit at the end of the tenancy. The landlord's photographic evidence verifies the damage to the laminate flooring, the dirty/dusty condition of the rental unit, damage and dirty marks on the walls and the stove not having been properly cleaned. The landlord has also submitted a receipt to verify the installation of the new laminate flooring prior to the start of this tenancy. Therefore the landlord is entitled to \$1034.45 for damages and cleaning costs.

In regards to the landlord's \$250.00 claim for the tenant breaking the fixed term tenancy, the addendum to the tenancy agreement is signed by the landlord but not by the tenant. And while the landlord may believe that the tenant agreed to the fees listed on this document, it is reasonable to believe that the tenant was not aware of these fees as she did not sign for acceptance of them. This portion of the landlord's claim is therefore dismissed without leave to reapply.

Accordingly I find that the landlord is entitled to a monetary order for \$1034.45. As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$1034.45 in damages and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$632.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$451.95**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 12, 2012

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Residential Tenancy Branch