



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application filed June 10, 2012: MND; MNR; MNDC; FF; SS

Tenant's application filed July 30, 2012: MNDC; FF; O

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for loss of revenue and damages to the rental unit; compensation for damage or loss under the Act; an Order that documents may be served in a different way than required by the Act; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Residential Tenancy Act (the "Act"); and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she mailed her Notice of Hearing documents to the Tenant, by registered mail, on June 13, 2012. A copy of the receipt and tracking numbers was provided in evidence. The Landlord testified that she also personally served the Tenant with the Notice of Hearing documents, with a witness present, on June 14, 2012, at 9:25 a.m. Based on the affirmed testimony and documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89 of the Act.

The Tenant testified that he mailed his Notice of Hearing documents and copies of his documentary evidence to the Landlord by registered mail, sent July 30, 2012. The Landlord acknowledged receipt of the documents by registered mail on July 31, 2012.

It established that the Tenant also received copies of the Landlord's documentary evidence by registered mail.

### **Preliminary Matter**

The Landlord has applied for an Order that documents may be served in a different way than required by the Act. The Tenant was served with the Notice of Hearing documents and copies of her documentary evidence in accordance with the provisions of Sections 89 and 88 of the Act. The Landlord did not provide testimony with respect to any

substituted service order she might be seeking with respect to any other documents and therefore, this part of the Landlord's application is dismissed.

**Issues to be Decided**

1. Is the Landlord entitled to a monetary award for damages, the cost of cleaning the rental unit, and loss of revenue from December 1 to 16, 2011?
2. Is the Tenant entitled to compensation pursuant to the provisions of Section 38(6) of the Act?

**Background and Evidence:**

This tenancy began as a fixed term tenancy on June 13, 2011, and converted to a month-to-month periodic tenancy on November 1, 2011. The rental unit is a single family dwelling, fully furnished. The tenancy ended on or about November 30, 2011. Monthly rent was \$3,500.00. The Tenant paid a security deposit in the amount of \$2,000.00.

On December 22, 2011, the Tenant had filed an application for compensation equivalent to double the amount of the security deposit. That Hearing took place on March 5, 2012. The Tenant's application for double the security deposit was dismissed because the Dispute Resolution Officer found that the Tenant had not provided sufficient evidence that he had served the Landlord with his forwarding address in writing. However, the Tenant was provided a Monetary Order against the Landlord representing return of the security deposit, \$2,000.00.

**The Landlord's witness provided the following affirmed testimony:**

The Landlord's witness stated that he is the Landlord's friend who has first-hand knowledge of the condition of the rental unit at the beginning and at the end of the tenancy because he was at the rental unit on or near those dates. He stated that the rental unit and furnishings were immaculate and in very good condition before the Tenant moved in.

The Landlord's witness stated that he was at the rental unit on November 27, 2011, mowing the lawn because neighbours had complained that the lawn was one foot high. He stated that while he was there mowing the lawn, he used the garbage cans in the garage and noticed that some of them were missing.

The Landlord's witness testified that he was at the rental unit at noon on December 1, 2011 and was shocked to see the condition that the Tenant had left it in. He stated that there was damage to walls; carbon, soot and sawdust everywhere; scratches and paint

residue on furniture; and that it was clear that no cleaning had been attempted. The Landlord's witness stated that it looked as if the rental unit had been used as a restoration centre.

The Landlord gave the following affirmed testimony:

The Landlord stated that the rental unit was in excellent condition when the Tenant moved in. She provided photographs that she stated were taken by a vacation rental company approximately three years ago. She also provided a copy of an e-mail dated June 12, 2012 from her property manager.

The Landlord testified that the Tenant moved into the rental unit because his own home had sustained smoke damage and he and his family needed a place to live while it was being remediated. The Landlord stated that she believed the Tenant used the rental unit as a place to repair furniture that was damaged by the fire. She stated that the Tenant caused the following damage to the rental unit and furnishings in the rental unit:

- Scratches and paint spills on a vintage Singer sewing machine;
- Paint on office chair and desk;
- Paint on vinyl deck and patio furniture;
- Dent and scratches on a leather chair;
- Scratches on side tables and coffee table;
- Damage to hard wood floors;
- Damage to tiled basement ceiling;
- Double sided tape left on hardwood floor.

The Landlord testified that she hired cleaners to clean the rental unit after the Tenant moved out and it took her and 4 cleaners 13.5 hours to clean because it was filthy. In addition, she stated she spent another 12 hours of her own time completing the cleaning, including dishes; laundry; cleaning appliances; garbage removal; removing paint from furniture and the deck; and removing the double sided tape from the hard wood floors. The Landlord stated that she also had to hire someone to steam clean the carpets, some chairs and a mattress. The Landlord stated that the Tenant removed some trash bins from the rental unit.

The Landlord provided a breakdown of her claim for cleaning and repairing the above mentioned items. This portion of her claim totals \$4,038.09.

The Landlord provided photographs of the rental unit that she testified were taken at the end of the tenancy and copies of estimates and invoices.

The Landlord testified that the Tenant did not provide written notice that he was ending the tenancy on November 30, 2011. She stated that she was not able to re-rent it until December 17, 2011. The Landlord provided a copy of the new rental agreement in evidence. The Landlord seeks loss of revenue in the amount of \$2,400.00 for the period between December 1 and 16, 2011.

The Landlord also seeks to recover the cost of serving the Tenant via registered mail, \$9.92.

The Tenant provided the following affirmed testimony:

The Tenant stated that there was no condition inspection performed at the beginning or the end of the tenancy. He testified that the rental unit was clean when he moved in, but that the furniture was not new. The Tenant stated that the photographs that were alleged to have been taken at the beginning of the tenancy could have been taken 20 or 30 years before, and that the rental unit did not look that good when he moved in.

The Tenant denied doing any painting, sawing or other repair work in the rental unit. He stated that he cleaned the rental unit, but did not do the floors at the end of the tenancy. The Tenant stated that he paid the Landlord \$20,000.00 over the period of the tenancy and that he also paid a nonrefundable "cleaning fee" of \$200.00 and therefore he believed the Landlord was already well compensated. The Tenant stated that the Landlord had an expectation that the rental unit should be left in a higher standard of cleanliness than "reasonably clean". The Tenant stated that any damage done was reasonable wear and tear.

The Tenant testified that the ceiling in the basement was already water damaged when he moved in.

The Tenant denied taking any garbage bins from the property.

The Tenant submitted that the Landlord is claiming for items that have not yet been fixed and that the documentary evidence included estimates rather than invoices. He questioned whether or not the Landlord had any intent on repairing the damaged hardwood floors.

The Tenant testified that he gave the Landlord notice that he was ending the tenancy by e-mail and that the Landlord acknowledged it and expected them to move on November 30, 2012. The Tenant stated that the new tenancy agreement with the next occupants was signed on November 20, 2011.

## **Analysis**

### **Regarding the Landlord's Application:**

I dismiss the Landlord's claim with respect to recovery of the cost of serving the Tenant with the Notice of Dispute documents (\$9.92) as this cost is not contemplated or recoverable under the provisions of the Act.

I find that the Landlord did not provide sufficient evidence that the Tenant had removed garbage bins from the rental unit and therefore this portion of her claim in the amount of \$90.69 is dismissed.

The Tenant disputed that he had damaged the rental unit beyond reasonable wear and tear and relied on the fact that the Landlord had failed to perform a move-in or move-out Condition Inspection as required by the Act. Therefore, the Tenant submitted the Landlord had insufficient proof that he was responsible for the damages claimed.

Section 21 of the Residential Tenancy Regulation provides that a condition inspection report completed in accordance with the Regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, **unless either the Landlord or the Tenant has a preponderance of evidence to the contrary**. In this case, I find that the Landlord has provided sufficient evidence that the rental unit was in very good condition at the beginning of the tenancy. When questioned about the photographs allegedly taken at the beginning of the tenancy that the Landlord provided in evidence, the Landlord's witness stated that they were accurate depictions of the state of the rental unit at the beginning of the tenancy. The Landlord's property manager also wrote a letter confirming that, "the home was in perfect condition in accordance to no damage of any furniture, floors or anything that I could see."

The Tenant did not dispute that the photographs of the rental unit at the end of the tenancy were accurate. He stated that he believed that the Landlord was sufficiently compensated because he paid rent in the amount of \$20,000.00 over the term of the tenancy and required a "cleaning fee". I find this argument irrelevant. Regardless of the amount of rent agreed upon between the parties, at the end of a tenancy Section 37(2)(a) of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I do not accept the Tenant's testimony that the paint splatters on the furniture is merely "dust" or that the wooden floors were damaged when he moved in to the rental unit. I prefer the Landlord's testimony, her witness's testimony and documentary evidence in

its entirety with respect to the damages claimed to the furniture, floors and ceiling of the rental unit.

I accept the Landlord's evidence that the Tenant did not leave the rental unit reasonably clean and that he damaged the rental unit beyond reasonable wear and tear.

I find that the Landlord's standard of cleanliness is a high one. The Act requires a tenant to leave the rental unit "reasonably clean". There is no higher standard for luxury accommodation. Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. The Landlord seeks a total of \$745.00 for the cost of hiring cleaners (\$438.75) and her own efforts in cleaning and removing paint from furniture and other surfaces (12.25 hours @\$25.00 = \$306.25). I find the amount claimed to be excessive, but recognize that the Tenant did not comply with Section 37(2)(a) of the Act and award the Landlord **\$400.00** for this portion of her claim.

The Tenant had a dog and did not shampoo the carpets at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that a tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of the tenancy, if the tenant has had uncaged pets. Based on the photographic evidence and invoice provided, I allow the Landlord's claim for the cost of shampooing the carpets, mattress top and chairs in the amount of **\$240.00**.

The Landlord provided estimates with respect to the remainder of her damage claim and I have found that the Tenant caused the damage. Therefore, I am satisfied that the Landlord has provided evidence with respect to the amount required to repair the damage caused by the Tenant. I allow this portion of her claim in the total amount of **\$2,038.40** (\$1,646.40 for the cost of repairing the hardwood floors and \$392.00 for the cost of repairing and painting the ceiling).

The Landlord seeks to recover loss of revenue from the Tenant because he did not provide notice to end the tenancy in accordance with the provisions of the Act. The Tenant provided copies of email correspondence between the parties. On September 28, 2011, the Landlord received and accepted the Tenant's notice that he was moving out effective November 30, 2011. On the same day it was subsequently extended to December 1, 2011.

The Landlord proceeded to enter into a new tenancy agreement on November 20, 2011 and I find that in so doing, she accepted the Tenant's notice as sufficient to end the tenancy. Otherwise, the Landlord would not have been at liberty to re-rent the rental

unit effective December 17, 2012. Therefore, this portion of the Landlord's application is dismissed.

The Landlord has been partially successful in her application and I find that she is entitled to recover half of the filing fee from the Tenant, **\$50.00**.

I find that the Landlord has established a monetary award in the total amount of **\$2,528.40** against the Tenant, calculated as follows:

Cleaning the rental unit	\$400.00
Cost of shampooing carpets, chairs and mattress	\$240.00
Damage to floors and ceiling	\$2,038.40
Recovery of ½ of the filing fee	<u>\$50.00</u>
Subtotal	\$2,728.40
Less amount already paid (cleaning fee)	<u>-\$200.00</u>
TOTAL	\$2,528.40

Regarding the Tenant's Application:

I find that the Tenant's application for compensation pursuant to the provision Section 38(6) of the Act with respect to the \$2,000.00 security deposit was decided at the previous Hearing on March 6, 2012. Therefore, the issue having already been decided, cannot be revisited by another Dispute Resolution Officer. The Tenant's application is dismissed.

**Conclusion**

The Tenant's application is **dismissed without leave to reapply**.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,528.40** for service upon the Tenant. This Order may be filed in the Provincial Court 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: August 24, 2012.

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Residential Tenancy Branch