



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: (MNDC), MND, MNSD, FF  
Tenant: MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for damage or loss 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 Tenant applied for compensation for damage or loss under the Act or tenancy agreement and to recover a security deposit and the filing fee for this proceeding.

During the first day of the hearing, the Landlord claimed that she wanted her realtor to give witness evidence however she was out of the country and not available to give evidence. As a result, the Landlord relied on a written witness statement from her realtor that she submitted as evidence. At the end of both Parties' evidence on the 2<sup>nd</sup> day of the reconvened hearing, the Landlord claimed again that she wanted her realtor to give oral evidence. Two attempts were made by the Dispute Resolution Officer to contact the Landlord's witness however she was not in her office and did not answer her mobile telephone. RTB Rule of Procedure 11.9 says that "*parties are responsible for having their witnesses available in-person or by conference call for the dispute resolution hearing.*" I find that the Landlord's witness was not available to give evidence at the date(s) and time(s) scheduled for the hearing and accordingly, I declined to reconvene the hearing for another day for the sole purpose of allowing the Landlord's witness to give oral evidence.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of a security deposit?

### Background and Evidence

This tenancy started on May 15, 2009 and ended on June 30, 2012 when the Tenant moved out. Rent was \$1,600.00 per month (including utilities) until January 1, 2012 when the Landlord increased it to \$1,700.00 per month. Rent was due in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$800.00 and a pet

deposit of \$800.00 at the beginning of the tenancy however the pet deposit was returned to the Tenant's co-tenant, L.V., when she vacated early in the tenancy. The Landlord removed L.V. from the tenancy agreement however she subsequently moved back into a basement suite in the rental property (as a sub-tenant) but did not repay the pet deposit.

The Parties completed a condition inspection report at the beginning of the tenancy. On July 3, 2012 the Parties participated in a move out condition inspection. The Landlord submitted a copy of a Condition Inspection report to the Tenant on July 5, 2012 to sign, however the Tenant claimed that the Landlord added additional information to the report that was incorrect and as a result he refused to sign it. The Tenant provided his forwarding address in writing on the move out condition inspection report.

#### The Landlord's Claim:

The Landlord claimed that at the end of the tenancy, the rental unit was not cleaned, there were some holes in the walls and the Tenant had left some belongings in the car port. The Landlord said there was no time to correct these deficiencies as the new owners took possession of the rental property the following day. The Landlord relied on the witness statements of her realtor and the purchaser's realtor as to their opinion of the state of cleanliness of the rental unit at the end of the tenancy. Consequently, the Landlord said she had to compensate the new owners \$350.00. The Tenant did not dispute that the rental unit required some additional cleaning but argued that it was not as bad as the Landlord alleged. The Tenant said the only holes in the walls were from mounting some items and that he repaired them. The Tenant also claimed that some stains on a carpet were caused by a septic back up. The Tenant also claimed that after the move out inspection he removed all of his items from the car port.

The Landlord also claimed that on or about June 20, 2012, the Tenant left a hose up against an irrigation spout with the result that water seeped against the side of the house and leaked into the basement of the rental unit. The Landlord said she incurred restoration expenses of \$709.76. The Landlord also claimed that as a further result of this leak, her water bill was approximately \$100.00 more than it should have been and she sought to recover this amount from the Tenant as well. The Tenant denied that the water leak in the basement was the result of the irrigation spout leaking against the side of the house. The Tenant said there was a large crack in the foundation approximately 1" wide and 16" long. The Tenant claimed that at the time in question, there were heavy rains that saturated the ground and that this was the cause of the leak. The Tenant also claimed that the restoration company advised the Landlord of this in a letter which the Landlord has failed or refused to provide as evidence at the hearing.

The Landlord also claimed that while the rental property was listed for sale, the Tenant failed to keep the property tidy for showings with the result that the property took longer to sell and sold for less. In particular, the Landlord said the Tenant allowed the grass

and weeds to become overgrown and left dirty dishes, food containers and garbage in the kitchen. The Landlord claimed that she advised the Tenant that she would be willing to maintain the yard but he refused. The Landlord said the Tenant's sub-tenant was also home during the showings and was very difficult to deal with. The Landlord relied on a witness statement of her realtor in which the realtor claimed that during showings the rental unit was "often cluttered, unclean and did not show well." The Landlord's realtor also claimed that the Tenant's subtenant was "frequently upset, confrontational" and emotional during showings so that prospective purchasers felt uncomfortable and did not want to spend much time viewing the property. The Landlord's realtor claimed in her witness statement that she believed "*the general lack of cleanliness, and clutter paired with the resistance of the [Tenant's sub-tenant] resulted in a longer listing period for you and likely resulted in obtaining less of an offer.*"

The Tenant said he works out of town and was unable to clean the rental unit or mow the lawn for some of the showings. The Tenant said he advised the Landlord of this however, her realtor often gave him short notice (or less than 24 hours notice) for showings. The Tenant said he tried to keep the rental unit as tidy as possible. The Tenant admitted that the Landlord spoke to him once about keeping the rental unit clean and tidy for showings and he said he complied. The Tenant claimed that after this discussion, nothing was said during the showings or afterwards about the lack of cleanliness or his failure to keep up the grounds (which the Landlord denied).

#### The Tenant's Claim:

The Tenant sought compensation for one month's rent as provided for under s. 50 of the Act when a Landlord gives a Tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property. The Tenant said that on April 28, 2012 the Landlord gave him a hand-written letter advising him that his tenancy would end in two months. The Parties then signed a Mutual Agreement to End Tenancy. The Tenant claimed that sometime later, the Landlord gave him a copy of the Residential Tenancy form of a 2 Month Notice to End Tenancy and asked him to sign it. The Tenant said the Landlord took this copy with her and did not leave him a copy. The Landlord denied that she gave the Tenant a Residential Tenancy form of a 2 Month Notice to End Tenancy. The Landlord said the Tenant agreed to end the tenancy before an agreement of purchase and sale was entered into. Consequently, the Landlord argued that the Tenant was not entitled to one month's compensation.

The Tenant also sought to recover an overpayment of rent. The Tenant claimed that in December of 2011, the Landlord verbally advised him that she would be raising the rent by \$100.00 per month due to an increase in the cost of utilities. The Tenant said he reluctantly paid the rent increase for the months of January to June 2012 inclusive. The Landlord admitted that she did not give the Tenant a Notice of Rent Increase nor did she obtain the Tenant's written agreement to the rent increase. The Landlord argued that the Tenant raised no objections to the rent increase.

The Tenant also sought compensation for a loss of quiet enjoyment during the period when the property was listed for sale, or from approximately April 12 – May 18, 2012. The Tenant claimed that during this period the Landlord's realtor had six showings and gave him proper (or 24 hour) notice for only one of them. The Tenant said that on most occasions, the Landlord's realtor would call him with only 10 hours notice. The Tenant admitted that he agreed to these showings but claimed that he continually complained to the realtor and the Landlord about the shortness of the notice. The Tenant claimed that on one occasion, the Landlord's realtor's spouse showed up at the rental property unannounced to paint a bathroom. The Tenant also claimed that the Landlord's realtor was unprofessional, abrasive and rude to him and his sub-tenant. The Tenant claimed that on 6 occasions, the realtor locked one of the doors he'd asked her not to and thereby locked him out of the rental property. The Tenant said the Landlord advised him that there was nothing she could do about these matters.

The Landlord said she had a meeting with the Tenant and his sub-tenant and told them that there was nothing she could do about past problems the Tenant and his sub-tenant had had with the showings but advised them that she would speak to her realtor about their concerns which she did. The Landlord said her realtor advised her that she gave the Tenant "adequate" notice by telephone for each showing. The Landlord also said that after the first time the Tenant was locked out, she made a number of keys for the lock in question and gave one to the Tenant. The Landlord said she tried the keys first to make sure that they worked. The Landlord argued that the Tenant was away for many of the showings and that the Tenant's sub-tenant had mental health issues which contributed to some of the difficulties when doing showings.

## **Analysis**

### **The Landlord's Claim:**

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. The Tenant admitted that he did not clean a number of items including bathrooms, freezers, behind appliances and inside cupboards. The Tenant also admitted that one light cover was missing, however the Tenant disputed that the rental unit was otherwise not reasonably clean. The Landlord claimed that when she tried to arrange a time to do the move out inspection, the Tenant said that he had only started cleaning and the move out inspection was scheduled (and took place) only 4 hours later. In addition to those things to which the Tenant admitted, the Landlord added that the Tenant failed to replace smoke detectors or to re-mount holders. The Landlord relied on the corroborating witness statements of her realtor and the purchaser's realtor as to the state of cleanliness and repair of the rental unit at the end of the tenancy.

Having regard to all of this evidence, I find on a balance of probabilities that the rental unit was not reasonably clean at the end of the tenancy. I am persuaded not only by the statements of the realtors in question but also that it was unlikely that 4 hours of cleaning would have been sufficient to leave the entire home reasonably clean. Consequently, I award the Landlord compensation of \$350.00.

On the issue of the water leak, the Landlord has the onus of proof that the Tenant was responsible for the damage which was due to his act or neglect. The Landlord claimed that prior to the tenancy, a similar leak had occurred when an irrigation head was jammed by a hose and sprayed the side of the house. As a result, the Landlord said she warned the Tenant to ensure that the same thing did not recur. The Landlord said the irrigation was hooked up in May 2012 and in June 2012 another water leak occurred which she believed was caused by the Tenant leaving a hose against the irrigation head. The Tenant denied this and claimed that at the time in question, there was an unusually heavy rainfall and that the excess water leaked through a large crack in the foundation. Given the contradictory evidence of the parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant was responsible for the water leak. As a result the Landlord's application for compensation for restoration expenses and water use charges are dismissed without leave to reapply.

I also find that there is insufficient evidence that the Landlord lost revenue from the sale of her home. The Landlord relied on the opinion of her realtor to that effect however, I find that there is no evidence that the Landlord's realtor is qualified to make an opinion of value and note that there is no indication in her statement as to whether she has professional training valuing property. Furthermore, I find that the realtor's opinion is speculative because there was no evidence as to what the market or appraised value of the property was, nor was there any evidence how much the Landlord received on its sale. In the absence of any evidence of loss, this part of the Landlord's claim is dismissed without leave to reapply.

I also find that the Landlord is entitled to recover the \$50.00 filing fee she paid for this proceeding and as a result, I find that the Landlord is entitled to a total monetary award of \$400.00.

#### The Tenant's Claim:

Section 50 of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to compensation equal to one month's rent. I find that on April 28, 2012 the Parties signed a hand written agreement to end the tenancy in two months time and that on May 27, 2012 the Parties entered into a Mutual Agreement to end the tenancy effective June 30, 2012. I find that there is no evidence that the Tenant was ever served with a Residential Tenancy form of a 2 Month Notice. I find that this is likely the case given that a 2 Month Notice can only be given to a Tenant

once there is a condition-free agreement for purchase and sale and the Landlord claimed that she did not enter into an agreement for purchase and sale until the beginning of June 2012. Consequently, the Tenant's application for one month's compensation is dismissed without leave to reapply.

Section 43 of the Act says that if a Landlord wishes to increase a Tenant's rent, they must give the Tenant three months notice in writing and the amount of the increase cannot be more than prescribed by the Regulations under the Act each year. Alternatively, the Landlord may increase a Tenant's rent above the prescribed amount however she must have the Tenant's written agreement to do so. In this case, I find that the Landlord did not give the Tenant a written notice of rent increase and did not obtain the Tenant's written consent to a rent increase of \$100.00 per month. Although the Landlord argued that this was to compensate her for the increased cost of utilities, I find that utilities are included in the Tenant's rent and therefore it is still an illegal rent increase under the Act. Consequently, I find that the Tenant is entitled pursuant to s. 43(5) of the Act to recover rent overpayments of \$600.00.

Section 28 of the Act says that a Tenant is entitled to quiet enjoyment including but not limited to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject to the Landlord's right to enter in accordance with s. 29 of the Act. Section 29 of the Act says that unless there is an emergency, a Landlord may not enter a rental unit unless the Landlord has given the Tenant 24 hours written notice of the entry or obtains the Tenant's permission at the time of entry.

The Tenant argued that the Landlord's realtor breached his right to quiet enjoyment by giving him short notice of showings, by being rude and disrespectful to him and his sub-tenant and by alleging that the rental unit was not in a presentable condition. The Tenant admitted that he gave his permission to the showings notwithstanding the shortness of notice. However, the Landlord argued that the rental unit was not clean and tidy during showings, that the Tenant was seldom present for showings and that the Tenant's sub-tenant made showings challenging for her realtor. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant is entitled to compensation and that part of his claim is dismissed without leave to reapply.

I find that the Tenant gave the Landlord his forwarding address in writing on July 3, 2012 and the Landlord has not returned his security deposit of \$800.00. As a result, I find that the Tenant is entitled to the return of his security deposit pursuant to s. 38(1) of the Act as well as to the \$100.00 filing fee he paid for this proceeding pursuant to s. 72(1) of the Act for a total monetary award of \$1,500.00.

**Conclusion**

A Monetary Order in the amount of **\$1,100.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: November 05, 2012.

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Residential Tenancy Branch