



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF  
                             MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenant.

The Landlords filed their application on October 15, 2012, to obtain a Monetary Order for: damage to the unit, site, or property; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed her application on October 16, 2012, to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlords for her application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Landlords be issued a Monetary Order?
2. Is the Tenant entitled to the return of double her security deposit?

### Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: 49 photographs; the most recent tenancy agreement ending September 30, 2012; the move-in and move-out condition inspection report form; Canada Post receipts; and quotes for repairs to the rental unit.

The Tenant submitted documentary evidence which included, among other things, copies of: her written statement; receipts for repairs completed at the rental property; and letter and e-mail communications between the parties.

The parties agreed that the Tenant has occupied the rental property since April 1, 2010 and entered into subsequent one year written leases. The most recent lease went from April 1, 2012 to September 31, 2012 [sic] (the end date would automatically correct to September 30, 2012). Rent was payable on the first of each month in the amount of \$1,800.00 and on March 8, 2010 the Tenant paid \$950.00 as the security deposit. The parties attended the move in condition inspection on March 31, 2010 and completed the condition inspection form on that date. A partial move out walk through inspection was conducted the evening of September 30, 2012 and the final inspection took place on October 1, 2012, at which time the parties signed the condition inspection form and the Tenant provided her forwarding address to the Landlords.

The Landlords affirmed that they altered the move out condition inspection form in the absence of the Tenant; after the Tenant signed it and before providing the Tenant with a copy of the form. They argued that they added only a few items which they found after the Tenant left the unit. The Landlords stated that a copy of the move out inspection was sent to the Tenant, via registered mail, along with a copy of their application for dispute resolution, on October 15, 2012.

Upon review of their application the Landlords withdrew their request for compensation for deck repairs and confirmed that the Tenant had arranged to have the deck repaired. They are seeking compensation for the remaining items as follows:

\$1,926.40 based on a quote provided in their evidence for painting all of the walls and ceilings of the rental unit. They alleged that the walls were completely painted just prior to the onset of this tenancy in April 2010. They have owned this property since 1996 and it has been a rental unit since July 2008. They did not provide evidence to prove the walls had been painted in 2010 and argued that the Tenant used the wrong color paint to do touch ups. They confirmed there was paint left at the rental unit however, that paint was not properly marked as to which room it was used for. They confirmed that the ceilings have never been painted for as long as they have owned the house and noted that the Tenant

attempted to paint them with the wrong type of paint. The Landlords alleged that they told the Tenant the ceilings were ruined during the move out inspection.

\$300.00 for the Landlord's labour to clean the rental unit as supported by the before and after pictures provided in their evidence. She alleged that she spent five or six days cleaning all of the kitchen and bathroom cabinets, the front entrance area and door, and washed all of the floors.

The Tenant argued that she was not provided a copy of the move-out inspection report in accordance with the Act, even after sending a registered letter on October 4, 2012 requesting a copy. She said when she did receive a copy it was not the same report she had signed. She argued that the report she received had additional information added as there were no comments on the report she signed other than *"Deck repair to be completed"*.

The Tenant disputes the Landlords' claim for painting because they had told her not to worry about the ceilings when she signed the new lease in March 2012 and because she filled and sanded numerous holes in the walls that were present at the onset of her tenancies. She noted that the Landlords told her they did not want her to worry about the incomplete ceiling paint job back in March 2012 because she was going through a separation. No mention was made about the paint color on the walls during her move out; however, she did inform the Landlords that there was poor quality of paint on the walls because it was coming off when she was wiping them. She argued that she was told by the Landlords that they were going to have to pay to have the entire house painted anyways so she would not have to worry about it. She said that at no time did they say the ceilings were ruined. If they had, she would have attended to them just as she did with the deck repair. Instead she was told everything was fine and she would be getting her deposit back.

The Tenant confirmed that her new place was not ready for her to access the evening of September 30, 2012 so she was allowed to stay one last evening in this rental unit. After the brief walk through with the Landlords on September 30, 2012 she said she asked them if there was anything else she needed to do and they told her no. She admits that she had assistance in cleaning the kitchen and that they may have missed a couple of drawers when cleaning but she did clean the majority of the kitchen. She noted that there were over twenty one cupboards and drawers in the kitchen and pointed out how the Landlords only provided a couple of pictures of dirty drawers and cupboards. She was happy to see the before and after pictures as they were proof that she did not damage anything.

The Landlord confirmed that the rental property was listed for sale, no one was currently occupying the property, and they have not had the painting done, as of yet. The male Landlord acknowledged that he spoke with the Tenant in March 2012 about the ceilings and that he may have told her not to worry about them because he knew she was under a lot of stress with her separation.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

### **Landlord's application**

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove they took action in a reasonable amount of time to mitigate their loss with respect to the ceilings. The only evidence before me was verbal testimony whereby both parties confirmed the Tenant was told in March 2012 not to worry about the ceilings and disputed verbal testimony about what was said to the Tenant at the end of the tenancy. After considering the foregoing and

that the ceilings had never been painted by the Landlords during the 17 years they have owned this property, I find there to be insufficient evidence to meet the test for damages, as listed above and their claim for painting the ceiling is dismissed.

Upon review of the evidence relating to the condition of the walls, I find the Tenant did what was required to fill; sand, patch and paint the walls. The Landlords left paint for the Tenant to use, without properly labeling it or without instructions for its use. There was no evidence to support when the walls had previously been painted. I accept the evidence which supports that there was a conversation at the end of this tenancy during which the Tenant voiced her concerns about the quality of the paint and that she was told not to worry about it because the Landlords were arranging to have the entire unit painted. Accordingly, I find there is insufficient evidence to meet the burden of proof for compensation for painting the walls, and the claim is dismissed.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In the presence of the Tenant's disputed testimony and after considering the alterations done by the Landlords to the move out condition inspection report form I accept the Tenant's evidence that there was a lesser amount of cleaning that was required. Accordingly, I award the Landlords cleaning costs in the amount of **\$150.00** (10 hours x \$15.00).

The Landlords have been partially successful with their claim; therefore I award partial recovery of their filing fee in the amount of **\$15.00**.

### **Tenant's application**

The *Residential Tenancy Regulation* section **18** (1) stipulates that the landlord must give the tenant a copy of the signed move out condition inspection report promptly and in any event within 15 days after the later of (i) the date the condition inspection is completed, and (ii) the date the landlord receives the tenant's forwarding address in writing. Failure to do so would result in

Section 36 of the Act provides that the right of a landlord to claim against the security deposit for damage to the unit is extinguished if the landlord having made an inspection with the tenant does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlords were therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the Tenant's forwarding address in writing. The Landlords received the Tenant's forwarding address on October 2, 2012, but did not return the security deposit within 15 days of that date.

I do not find it a mere coincidence that the Landlord's altered the move out condition inspection report and filed an application for dispute resolution a few days after they received the Tenant's registered mail requesting a copy of the move out condition inspection report. Furthermore, the Landlords provided incorrect testimony when they said they sent the Tenant a copy of the move out form by registered mail on October 15, 2012, along with their hearing documents. The hearing documents were not created until October 17, 2012; therefore, the earliest they could have been sent to the Tenant was October 17, 2012, sixteen days after the Landlord's regained possession of the unit and received the Tenant's forwarding address. I also note that the Canada Post receipts provided in evidence by the Landlord indicate that registered mail was sent to the Tenant on October 19, 2012.

Because the Landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the Tenant's security deposit within 15 days of having received her forwarding address, section 38 of the Act requires that the Landlords pay the Tenant double the amount of the deposit plus interest. Accordingly, I award the Tenant **\$1,900.00** (2 x \$950.00 + interest of \$0.00).

The Tenant has been successful with her claim; therefore I award her recovery of her **\$50.00** filing fee.

**Monetary Order** – Have found that each party is entitled to monetary compensation I have offset the awards as follows:

Tenant's monetary award (\$1,900.00 + \$50.00)	\$1,950.00
LESS: Landlord's award (\$150.00 + \$15.00)	<u>(165.00)</u>
<b>OFFSET amount due to the Tenant</b>	<b><u>\$1,785.00</u></b>

### Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$1,785.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be 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: January 14, 2013

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Residential Tenancy Branch

