



# Residential Tenancy Branch

RTB-136

## DECISION

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On November 25, 2013 the Landlord submitted a package of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this package was served to the Tenant, via email, on November 27, 2013. The Tenant stated that she received the package, via email, on November 26, 2013. As the Tenant acknowledged receipt of the package within the timelines established by the Residential Tenancy Branch Rules of Procedure, I accepted the documents as evidence for these proceedings.

The Tenant stated that she has not had time to respond to the evidence that was recently served to her by the Landlord and she requested an adjournment for time to submit evidence. She stated that she wishes to submit a copy of the condition inspection report that was completed at the start of the tenancy, which she contends will show that some of the damage being claimed by the Landlord pre-existed the tenancy.

Given that the Tenant only received the Landlord's evidence six days ago, most of which could have been provided to the Tenant in August of 2013, I find that it would be fair and reasonable to provide the Tenant with more time to respond to the evidence that was recently served. I therefore adjourned the matter for the purpose of providing the Tenant with the opportunity to submit evidence in this matter.

On December 06, 2013 the Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

On January 15, 2014 the Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

With the consent of both parties, the Landlord's Application for Dispute Resolution was amended to reflect the Tenant's legal name, as was provided by the Tenant during the proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage and a "move out fee" and to retain all or part of the security deposit?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2012; that they had a written tenancy agreement; that the Tenant agreed to pay monthly rent of \$4,350.00 by the first day of each month; and that the Tenant paid a security deposit of \$2,175.00. A copy of the tenancy agreement was not submitted in evidence.

The Landlord and the Tenant agree that this tenancy ended on July 31, 2013 and that the Tenant provided the Landlord with a forwarding address, via email, although neither party can recall the date the forwarding address was provided.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning of this tenancy, a copy of which was submitted in evidence by the Tenant.

The Landlord and the Tenant agree that a condition inspection report was not completed at the end of this tenancy and that the Landlord did not schedule a time to inspect the rental unit at the end of the tenancy, although they did discuss the need to inspect the rental unit.

The Landlord is seeking a move-out fee of \$200.00. The Agent for the Landlord stated that the Tenant agreed to pay a move-out fee and that there is a clause in the tenancy agreement that requires this fee to be paid. The Tenant stated that she did not agree to pay a move-out fee and that she does not believe the tenancy agreement requires her to pay this fee.

The Landlord is seeking compensation, in the amount of \$180.00, for cleaning the carpet. The Tenant acknowledged that the carpet needed cleaning and she does not dispute the claim for \$180.00.

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The Landlord is seeking compensation, in the amount of \$150.00, for replacing a set of broken taps. The Tenant acknowledged that the taps were damaged during the tenancy and she does not dispute the claim for \$150.00.

The Landlord is seeking \$224.00 for the cost of plumbing repairs in the rental unit. The Agent for the Landlord stated that sometime between July 29, 2012 and December 12, 2012 the Tenant reported that the toilet had backed up. She stated that she and her contractor subsequently inspected the toilet, at which time it was not backed up, and the contractor used a plunger on the toilet. She stated that she did inform the Tenant that if the problem continued it may be a strata issue, but she did not tell the Tenant to notify the strata if the problem persisted.

The Tenant stated that that a few days after this tenancy began the toilet backed up; that the problem was reported to the Agent for the Landlord; that she believes the Landlord had the problem repaired; and that the Agent for the Landlord told her that if the problem persisted it was likely a strata issue.

The Tenant stated that the toilet and sink backed up one two occasions after the initial incident and that she reported the problem to the building concierge. She stated that she did not specifically ask the building concierge to contact a plumber but that the concierge did contact a plumber on both occasions, who attended the rental unit to repair the blockages.

The Landlord submitted a receipt, dated December 13, 2012, which indicates the toilet and kitchen sink were "snaked" on December 13, 2013. The Landlord submitted a receipt, dated January 08, 2013, which indicates that two toilets were "snaked" on December 20, 2013. The Landlord contends that the Tenant is responsible for the repairs because the Tenant, or a guest of the Tenant, improperly disposed of items in the toilet/garburator.

The Landlord submitted an email, dated January 18, 2014, from the general manager of the strata corporation, in which he stated that he spoke with the plumber who "snaked" the kitchen sink. The email indicates that the plumber informed the general manager that the blockage was caused by pieces of plastic bags and plastic utensils being introduced to the garburator.

In the aforementioned email the general manager declared that he spoke with the supervisor of the plumbing company who "snaked" the toilets/sink, who informed him that on the second occasion blockages were located within the toilet. The general manager does not specify the nature of the blockages.

The Landlord submitted an email, dated February 02, 2013, from the individual who occupied the rental unit prior to this tenancy. This individual reported that they did not have trouble with the toilet in the master bathroom backing up during their tenancy, which lasted more than one year.

The Landlord is seeking compensation, in the amount of \$600.00, for repairing a variety of scratches, gouges, and dents on the walls of the rental unit. The Landlord submitted photographs of several areas that have been damaged.

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The Tenant stated that all of the wall damage depicted in the photographs was present at the start of the tenancy. The Tenant submitted a copy of the condition inspection report that was completed at the start of the tenancy, which is not particularly detailed and which is not the report that is provided by the Residential Tenancy Branch. The report indicates that the dining room walls have “dents on corners”; that the overall wall and trim have “scratches”; that the wall by the patio door has “dents”; and that the rental unit was not painted “before move-in”.

The Agent for the Landlord agreed that the walls had some damage prior to the start of the tenancy but she stated that all of the damage to the walls depicted in the photographs occurred during the tenancy.

The Landlord is seeking compensation, in the amount of \$75.00, for repairing two electrical outlets that had been pulled out of the wall. The Landlord submitted an invoice that shows the Landlord was charged \$75.00 to repair the two outlets.

The Landlord submitted a photograph of one outlet that had been partially pulled out of the wall and was held in place by tape and one photograph of an electrical box without an outlet. The Agent for the Landlord stated that she noticed the damage to both outlets when she first inspected the rental unit at the end of the tenancy.

The Tenant stated that she recalls one outlet was pulled out of the wall and had been repaired by tape but she does not recall an electrical box without an outlet.

The Landlord is seeking compensation, in the amount of \$67.40, for replacing 6 light bulbs. The Landlord submitted an invoice that shows the Landlord was charged \$30.00 to replace 6 ceiling pot light bulbs. The Landlord submitted a receipt that shows 6 light bulbs were purchased for \$59.88.

The Agent for the Landlord stated that 6 ceiling pot lights were burned out at the end of the tenancy. The Tenant stated that she does not recall any light bulbs being burned out at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$125.00, for cleaning the rental unit. The Landlord submitted an invoice that shows the Landlord was charged \$126.00 for cleaning. The Agent for the Landlord stated that additional cleaning was required, particularly in the kitchen and bathroom. The Landlord submitted photographs of spots on the kitchen ceiling and the inside of a freezer.

The Tenant stated that she did clean the rental unit at the end of the tenancy; that it was not in “perfectly new” condition but it was in the same condition it was in at the start of the tenancy; and that the photograph of the freezer is not the inside of her freezer.

The Landlord is seeking compensation, in the amount of \$25.00, for replacing a “roller shade” in the bedroom. The Landlord submitted an invoice that shows the Landlord was charged \$50.00 for repairing the roller shade. The Agent for the Landlord stated that shade would not retract at the end of the tenancy. The Landlord submitted a photograph of the shade, which the Agent for the Landlord contends shows the shade could not retract.

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The Tenant stated that the roller shade in the bedroom was functioning properly at the end of the tenancy.

### Analysis

Section 7 of the *Residential Tenancy Regulation* authorizes a landlord to charge a move-in or move-out fee charged by a strata corporation to the landlord, providing the tenancy agreement provides for that fee. I find that the Landlord has submitted insufficient evidence to show that tenancy agreement requires the Tenant to pay a move-out fee. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as the tenancy agreement, that corroborates the Landlord's claim that the tenancy agreement requires this fee to be paid or that refutes the Tenant's position that the tenancy agreement does not require this fee to be paid. As the burden of proving the Tenant is obligated to pay fees rests with the Landlord, I dismiss the Landlord's claim for a move-out fee.

As the Tenant agreed that the Landlord is entitled to \$180.00 for cleaning the carpet and \$150.00 for replacing a set of taps, I find that the Landlord is entitled to compensation for these expenses, in the amount of \$330.00.

When making a claim for damage to the rental unit, the Landlord bears the burden of proving the claim. Proving a claim for damage to the rental unit includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant reported a plumbing problem to the building concierge on two separate occasions and that the concierge asked a plumber to repair the problem on both occasions. Although the Landlord and the Tenant don't agree on the specifics of the conversation, they do agree that at some point the Agent for the Landlord informed the Tenant that if the plumbing problems in the unit persist, the strata may be responsible for the repair. I therefore find it reasonable that the Tenant reported subsequent problems to the building concierge.

I find that the Tenant cannot be held responsible for the actions of the building concierge, as she has no authority over that individual. I therefore find that the Tenant is not obligated to pay for the costs of the plumber that was called to the unit by the concierge, unless it can be established that the plumbing problems were caused by the actions or neglect of the Tenant. The Landlord retains the right to seek compensation from the strata in the event that concierge has acted without proper authority by asking a plumber to attend the rental unit.

Section 32 of the *Residential Tenancy Act (Act)* requires tenants to repair damage caused by actions or neglect. On the basis of the email from the general manager of the strata corporation, dated January 18, 2014, I find that pieces of plastic bags and plastic utensils were introduced into the garburator, which resulted in a plumbing blockage. As these items are not supposed to be disposed of in a garburator, I find that the blockage was the result of the actions and/or neglect of the Tenant, and that the Tenant was responsible for repairing the blockage. On this basis, I find that the Tenant

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is obligated to pay the \$112.00 that the plumber charged to clear the blockage in the sink on December 11, 2012.

I find that I have insufficient evidence to conclude that the plumbing problem that occurred on December 20, 2012 was caused by the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that establishes the nature of the blockage(s). Without evidence to show that the blockage(s) were caused by something that was improperly discarded in the toilet, I cannot conclude that the blockage(s) was the fault of the Tenant. As I cannot conclude that the toilet(s) were blocked as the result of the action or neglect of the Tenant, I find that the Tenant is not obligated to pay for the cost of this repair.

In determining this matter I have placed little weight on the email from the former occupant of the rental unit, dated February 02, 2014. While I accept that this occupant did not experience a problem with the toilet in the master bathroom, the email does not establish that a problem associated to normal wear and tear did not develop over time.

I find that the Landlord has submitted insufficient evidence to establish that the damage to the walls depicted in the photographs submitted in evidence was not present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the damage did not pre-exist the tenancy or that clearly refutes the Tenant's testimony that the damage did pre-exist the tenancy.

In determining this matter I did place some weight on the condition inspection report that was completed at the start of the tenancy. This report indicates that the walls in the rental unit were damaged to some degree, which provides some credibility to the position of the Tenant.

It is the Landlord's responsibility to establish the condition of the rental unit at the start of the tenancy, which is typically accomplished by completing a detailed inspection report. In these circumstances the information contained on the condition inspection report is limited and it does not assist me in determining the degree of damage to the walls at the start of the tenancy.

As the Landlord has failed to establish that the damage to the walls that is depicted on the photographs was not present at the start of the tenancy, I find that I am unable to conclude that the walls were damaged during the tenancy. I therefore dismiss the Landlord's claim for repairing the walls.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair two electrical outlets that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$75.00 to repair the two outlets.

In concluding that there was at least one damaged outlet, I was influenced by the photograph of the outlet that had been repaired by tape and by the Tenant's admission that this outlet was damaged during the tenancy. As outlets are not typically pulled out of the wall through normal use, I find that the Tenant is obligated to repair this outlet.

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I find, on the balance of probabilities, that a second outlet was also damaged during the tenancy. In reaching this conclusion I placed greater weight on the testimony of the Agent for the Landlord, who was certain she observed two damaged outlets, than on the testimony of the Tenant, who only stated that she could not recall a missing outlet.

In concluding that there were two damaged outlets, I was influenced, in part, by the invoice which indicates that two outlets were replaced. I find that this corroborates the claim that two outlets were damaged, as I find it unlikely two outlets would be replaced unless two outlets were broken.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace all the light bulbs that were burned out during the tenancy. As the Landlord has submitted a receipt and an invoice that shows more than \$67.40 was paid to replace the light bulbs, I find that the Landlord is entitled to the full amount of the claim to replace the 6 light bulbs, which was \$67.40.

In determining this claim I placed greater weight on the testimony of the Agent for the Landlord, who was certain that six light bulbs were burned out than on the testimony of the Tenant, who only stated that she could not recall any burned out lights. In determining this claim, I was influenced, in part, by the invoice which indicates that six light bulbs were replaced. I find that this corroborates the claim that bulbs were burned out, as I find it unlikely that light bulbs would be replaced unless they were not working.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she did not leave the rental unit in reasonably clean condition at the end of a tenancy. On the basis of the photographs submitted in evidence, I find that additional cleaning was required, at least to the refrigerator and the kitchen ceiling. As the Landlord has submitted an invoice that show that \$126.00 was paid for cleaning, I find that the Landlord is entitled to the full amount of the claim for cleaning, which was \$125.00.

I favour the testimony of the Agent for the Landlord over the testimony of the Tenant in this regard, as the Agent's testimony was corroborated by photographs. Although the Tenant stated that the photograph of the inside of the freezer was not a photograph of the inside of her freezer, I find, on the balance of probabilities, that it was a photograph of her freezer. Given that the Tenant acknowledged that all the other photographs were of the rental unit, I find it highly unlikely that the Landlord would fabricate this single piece of evidence, given the relatively limited value of this particular photograph.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the roller shade in the bedroom. As the Landlord has submitted an invoice that shows that \$50.00 was paid for this repair, I find that the Landlord is entitled to the full amount of the claim for repairing the shade, which was \$25.00.

In concluding that the shade was damaged I was influenced by the invoice which indicates that shade was repaired. I find that this corroborates the claim that the shade was damaged, as I find it unlikely that the shade would be repaired if it was not broken.

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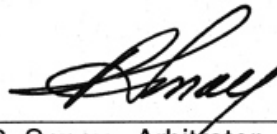
### Conclusion

The Landlord has established a monetary claim, in the amount of \$784.40, which is comprised of \$734.40 for damage to the rental unit and \$50.00 in compensation for the filing fee paid by the Landlord for this Application. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the \$2,175.00 security deposit.

Based on these determinations I grant the Tenant a monetary Order for the remainder of the security deposit, which is \$1,390.60. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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 29, 2014



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P. Senay, Arbitrator  
Residential Tenancy Branch

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Residential Tenancy Branch

## Now that you have your decision...

**All decisions are binding and both landlord and tenant are required to comply.**

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
  - How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
  - How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
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- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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