# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**:

Tenants' application: MNDC, MNSD, FF

Landlord's application: MNR, MND, MNDC, FF

**Introduction**

This Hearing was convened to consider cross applications. On December 23, 2013, the Tenants filed an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; and to recover the cost of the filing fee from the Landlords.

On February 27, 2014, the Landlord DD filed an Application for Dispute Resolution seeking a monetary award for unpaid rent and damages to the rental property; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearings.

It was determined that the parties served each other with their Notice of Hearing documents and copies of their documentary evidence by registered mail. Both parties provided late evidence, but neither party requested an adjournment in order to prepare for the Hearing.

**Preliminary Matters**

The Tenants' Application names the Landlord DD and the Landlord ND as Respondents. At the outset of the Hearing the Landlord DD stated that ND is not the Tenant's "landlord" and that the tenancy agreement was between the Landlord DD and the Tenants only. DD asked that ND's name be struck from the Tenant's Application.

The Tenants stated that they often had dealings with ND during the tenancy and that he often responded to their requests for repair and their complaints about their neighbours.

The Act defines "landlord" as, "the owner of the rental unit, the owner's agent or **another person who, on behalf of the landlord,** permits occupation of the rental unit under a tenancy agreement or **exercises powers and performs duties under the Act, regulation or tenancy agreement**." [my emphasis added] In this case, I find that ND made repairs to the rental unit, arranged for repairs to be made, and communicated with the Tenants with respect to tenancy issues. Therefore, I am satisfied that ND is the Landlord DD's agent and is a "landlord" as defined by the Act.

## Issues to be Decided

1. Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement and return of the security deposit?
2. Are the Landlords entitled to a Monetary Order for loss of revenue and damages to the rental unit?

## Background and Evidence

The rental property is a house with two suites, one of which the Tenants occupied. A copy of the tenancy agreement was provided in evidence, signed by DD on April 30, 2012 and the Tenants on May 3, 2012. The tenancy agreement indicates that the tenancy began on June 1, 2012; however, the Tenants testified that they moved into the rental unit in May, 2012. Monthly rent was $1,050.00, due on the first day of each month. Rent did not include electricity or heat. The Tenants paid a security deposit in the amount of $525.00 at the beginning of the tenancy.

The Tenants moved out of the rental unit and returned the keys to DD on November 29, 2013. The Tenants testified that they provided their forwarding address in writing on November 29, 2013. DD acknowledged receipt of their forwarding address on November 29, 2013, and submitted a copy of the Tenant's letter in evidence.

The Tenants testified that on December 4, 2013, the Landlords returned a portion of the security deposit, in the amount of $411.72. The Tenants stated that the Landlords retained $113.28 for the cost of paint and that they did not give the Landlords permission to keep any of the security deposit. The Tenants seek compensation pursuant to the provisions of Section 38 of the Act. The Tenants testified that there were no Condition Inspections performed at the beginning or the end of the tenancy.

DD testified that the Tenants agreed to the deduction from the security deposit. She stated that the male Tenant nodded in agreement, but did not provide the Landlords with permission in writing.

The Tenants testified that they had problems with the other occupant of the rental property and that the Landlords were advised, but did nothing to remedy the situation. The Tenants stated that they wanted to remain living in the rental property for a long time, but that the other occupant's actions made it impossible for them to stay. The Tenants stated that the other occupant and/or her guests slammed doors; smoked marijuana; spit on their walkway, damaged their property; and stored gasoline unsafely on the rental property. The Tenants seek compensation in the equivalent of two months' rent for loss of peaceful enjoyment.

DD testified that there were issues between the other occupant and the Tenants, but that the other occupant told her that the Tenants were at fault. DD stated that the Tenants played music loudly at night, which kept the other occupant's child awake. DD testified that the Tenants also washed toxic substances down the shared driveway and that the female Tenant took pictures of the other occupant's bedroom through the bedroom window, without permission. The Landlords provided copies of e-mails in evidence.

DD testified that the Tenants painted the rental unit in bright colours without the Landlords' permission. She stated that the colours were too bright and that she had to repaint the rental unit, which took time and cost the Landlords one month's rent. DD seeks to recover the cost of painting, in the total amount of $3,813.16. DD testified that the rental unit was last painted approximately a year before the Tenants moved in. The Landlords provided invoices and photographs in evidence.

The Tenants testified that they had permission to paint the rental unit, and that DD saw the paint job after they had finished and remarked that she liked the colours. The Tenants submitted that the Landlords even reimbursed them for the cost of the paint. The Tenants submitted that the Landlords' invoices include construction materials and it appears that both suites were updated. The Tenants stated that the invoices are from the ND's company and suggested that the prices are exaggerated. The Tenants submitted that the actual cost for repainting was $113.28, which the Landlords had already deducted from the security deposit without permission.

DD submitted that she only required $113.28 at the time the Tenants were moving out because the female Tenant was very upset that they would have to paint the walls a neutral colour and asked how much it was going to cost. DD submitted that she told the Tenants it would be $113.28 in order to avoid a scene and that it actually cost much more. DD testified that the Tenants painted high gloss over the kitchen cupboards and other areas, which had to be de-glossed before painting back to the original colours. She stated that the Tenants also painted the rangehood with green latex paint over the baked enamel factory finish, which also required extensive sanding and prep work

before re-painting with high temperature gloss white paint. DD denied reimbursing the Tenants for the cost of paint when they painted the rental unit at the beginning of the tenancy.

DD stated that the Tenants also painted a deck fence bright green and partially painted the deck without permission. DD seeks to recover the cost of removing the paint from the fence and staining it. She stated that this has not been done yet, but will be done when the weather improves. The Landlords provided an estimate in the amount of $555.00 for this job.

The Landlords also seek compensation for loss of revenue for the month of December, 2013, because they were unable to re-rent the rental unit while they were painting.

The Tenants stated that the estimate was inflated and that it would cost less than $555.00 to replace the fence. The Tenants stated that the deck was in need of replacement. The Tenants provided photographs of the deck and the walls of the rental unit and submitted that the Landlords were exaggerating when they stated that the colours were too vibrant.

DD testified that the Tenants complained that their fridge was not working properly. She stated that an appliance technician inspected the fridge and found nothing was wrong with it and that the Tenants had been overfilling the freezer compartment, causing the fan to cease working. The Landlords submitted that this was the Tenants' fault and they seek to recover the cost of the repairman's bill in the amount of $94.08. The Landlords provided a copy of the repairman's invoice in evidence. DD stated that the fridge was approximately 10 years old.

The Tenants denied overloading the fridge and disputed that the fridge was only 10 years old.

DD testified that the Tenants took their name off the hydro bill effective November 16, 2013. She seeks a monetary award in the amount of $50.19 for the cost of hydro from November 16 to November 29, 2013. The Landlords provided a copy of the hydro bill in evidence.

DD testified that the Tenants left a paint can at the rental unit. She seeks compensation in the amount of $20.00 for disposing of the paint can.

The Tenants acknowledged leaving the paint can at the rental property and said it was an oversight. The Tenants questioned the amount that the Landlord is claiming for disposing of the can.

**Analysis**

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim. In this case, both parties are claiming damage or loss and therefore the onus is on each party to prove their own claim on the civil standard, the balance of probabilities.

1. Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement and return of the security deposit?

A security deposit is held in a form of trust by the Landlords for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

In this case, there is no dispute that the Tenants provided their forwarding address in writing on November 29, 2914. The parties disagree with respect to whether or not the Tenants provided their consent that the Landlords could retain $113.28 of the security deposit. However, it is not disputed that the Tenants did not provide their consent in writing. In any event, the Landlords did not complete a Condition Inspection Report at the beginning or the end of the tenancy. The Condition Inspection Report contains a spot for tenants to sign when they agree to relinquish a portion or all of the security deposit. Section 38(5) of the Act provides that a landlord gives up the right to claim against a security deposit for damage if the landlord does not perform Condition Inspections at the beginning and the end of the tenancy.

The Landlords mailed a portion of the security deposit to the Tenants within the 15 day time limit to do so. However, I find that the Landlord did not have a right under the Act to retain $113.28 of the Tenant's security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld ($113.28 x 2 = **$226.56**).

With respect to the Tenants' claim for compensation for loss of peaceful enjoyment, I find that the Tenants did not provide sufficient evidence to prove this portion of their

claim. I accept that there was animosity between the other occupant and the Tenants; however, the undisputed e-mail evidence indicates that this was reciprocated and not one sided. In any event, the Tenants' are seeking complete abatement of rent for two months, which is unrealistic. This portion of their claim is dismissed.

2. Are the Landlords entitled to a Monetary Order for loss of revenue and damages to the rental unit?

Based on the tenancy agreement, the hydro statement and the undisputed testimony of the Landlords, I find that the Tenants are responsible for paying hydro in the amount of **$50.19** from November 16 – 29 ($262.58 x 13 days / 68 days). This portion of their claim is granted.

The Landlords did not provide proof of the cost to dispose of the paint can left behind by the Tenants. However, the Tenants acknowledged leaving it at the rental property. Therefore, I award the Landlords a nominal amount of **$5.00** for this portion of their claim.

The Landlords provided no evidence of the attempts that they made to re-rent the rental unit after the Tenants gave notice to end the tenancy, or whether the paint colours detracted possible renters. Therefore, I find that the Landlords have not proven their claim for loss of revenue. This portion of their claim is dismissed.

The invoice from the appliance repairman is dated October 31, 2012, which is more than one year before the tenancy ended. The Landlords did not explain why they waited a year to pursue the Tenants for the cost of these repairs. The Tenants dispute that they are responsible for the breakdown of the fridge. The invoice does not assign blame and merely states, "air passages plugged with frost. Checked system – advised to unplug and fully thaw unit." I find that the Landlords did not prove this portion of their claim, and it is dismissed.

The photographs of the interior paint provided by the Landlords are not particularly helpful because they are photographs taken after the walls were re-painted and therefore only show little bits of the colour of the Tenants' paint near light fixtures, etc. The Tenants' photographs are more helpful because they were taken before the Landlords repainted. I find that there is insufficient evidence to support the amount of the claim that the Landlords have made with respect to interior paint. The Residential Tenancy Branch Guidelines indicate that the useful life for indoor paint is 4 years. DD testified that the paint was a year old when the Tenants moved in, which means that the walls would have been due for new paint in another 2 years. If I accepted the Landlords' evidence with respect to cost and labour, the amount would have to be

halved to allow for depreciation. However, I find that the Landlord did not provide sufficient evidence that the entire rental unit required re-painting inside. I prefer the Landlords' other evidence, the copy of the cheque that DD wrote to the Tenants, indicating "deposit, less cost of paint for living room, kitchen and patio [$113.28]". Therefore I allow this portion of the Landlords' claim in the amount of **$113.28**.

The Tenants did not allege that the Landlords gave permission to paint the fence. I accept the Tenants' evidence that the deck was in need of repair due to age. Based on the photographs provided and the testimony of both parties, I find that the Landlord is entitled to a monetary award for the cost of removing the paint from the fence. I accept the Tenants' testimony that the fence was new, but unfinished at the beginning of the tenancy. Therefore, I do not allow the Landlord's claim for the cost of staining the fence. The Landlord's agent provided an estimate at an hourly rate of $40.00 an hour. He also added a "10% fee for work completed". I find that this hourly rate and the "10% fee" is excessive. A landlord may hire a contractor to remove the paint from the fence; however, the tenant should not be expected to pay for the contractor's hourly rate. I find an hourly rate of $25.00 an hour is reasonable for the Landlord's labour costs. With respect to the estimate for material costs, I find that the Landlords did not provide sufficient evidence of the cost of materials to remove the green paint. Therefore, pursuant to the provisions of Section 67 of the Act, I award the Landlords **$50.00** for the cost of materials. I also allow the Landlords' claim for 2 hours of power washing, **$50.00**.

The Landlords have established a total monetary award, calculated as follows:

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| Unpaid hydro | $50.19 |
| Nominal amount for disposing of paint can | $5.00 |
| Cost of indoor paint | $113.28 |
| Removing the paint from the fence | $100.00 |
| TOTAL | **$268.47** |

Regarding recovery of the filing fees

Both parties were partially successful in their claims and I order that they each bear the cost of their own filing fees.

## Conclusion

The Tenants have established a monetary award of **$226.56.**

The Landlords have established a monetary award of **$268.47.**

I set off the Tenants' monetary award against the Landlords' monetary award and hereby provide the Landlords with a Monetary Order in the amount of **$41.91** for service upon the Tenants. 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: May 07, 2014

Residential Tenancy Branch