



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for compensation for damage to the unit, site or property, for unpaid rent, for loss or damage under the Act, regulations or tenancy agreement, to retain the security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 2, 2014. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The Landlords indicated in their evidence package that this tenancy had a previous dispute resolution hearing, file # A, in which the Landlords were granted an order of Possession effective May 31, 2014.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation and if so how much?
3. Is there unpaid rent and are the Landlords entitled to compensations for unpaid rent?
4. Is there damage or loss under the Act, regulations or tenancy agreement and are the Landlords entitled to compensation for that damage or loss?
5. Are the Landlords entitled to retain the Tenants’ security deposit?

### Background and Evidence

This tenancy started on May 1, 2008 as a 1 year fixed term tenancy and then continued on a month to month basis. Rent was \$1,981.70 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$950.00 on March 18, 2008. The Parties agreed there was no move in condition inspection report completed, but a move out condition inspection report was completed on May 31, 2014. The tenancy ended on May 31, 2014 as a result of an Order of Possession issued to the Landlord.

The Landlord said she did not complete a move in condition inspection report, but the Landlord said the Tenant agreed that the unit was in good condition at the start of the tenancy. The Landlords' original application is for unpaid rent of \$1,881.70 and the filing fee of \$50.00. On July 16, 2014 the Landlord submitted a request to amend the claim to \$7,988.45. The Tenant said they received the request to amend the application on July 22, 2014 and their response to the amendment is too late for this hearing, so the Tenants requested and adjournment so their evidence can be included.

The Arbitrator said he will consider the request for the adjournment and the request to amend the application, but will proceed with the hearing based on the evidence in front of him as it may be sufficient to conclude this dispute.

The Arbitrator continued to say that if a Landlord and Tenant do not complete a move in condition inspection according to the regulations then the Landlord cannot establish a base line to measure any damage from. There may be damage to a rental unit but it is the Landlords' responsibility to prove what damage happened during the tenancy and if there is no base line to measure the damage it is not possible to measure or quantify any damage to the rental unit. The Landlord said she understood and questioned if it was not the Tenants responsibility as well as the Landlords' to do a move in condition inspection report. The Arbitrator said it is the landlords' responsibility to do the report although a tenant may request the report to be done.

The Landlord continued to say that the Tenant damaged the shower by changing the shower head and as a result the Landlord incurred the following costs to repair the bathroom and kitchen from the leak that resulted. The Landlord said they spent \$295.02 to have a plumber repair the pipe, \$268.07 for dry wall repairs, \$280.77 for painting the bathroom, \$245.00 for painting the kitchen ceiling and \$25.00 for paint. The Landlord said this damage was because the Tenants actions. As well the Landlord said the leak occurred on December 22, 2013 and the Tenant did not tell the Landlord about the leak until January 6, 2014. The Landlord said she is claiming \$1,113.86 in damages caused by the Tenant from changing the shower head.

The Tenant said he changed the shower head in May, 2008 at the start of the tenancy and the shower did not leak until December 22, 2013 when the pipe in the wall cracked due to a poor installation of the copper pipe when the unit was built. The Tenant said

the plumber said the copper pipe was bent instead of installing a copper elbow turning the pipe to the shower. As a result over time the bent pipe developed a crack and started to leak. The Tenant continued to say they stopped using the shower so there was no urgency to tell the Landlord about the leak as it was not leaking if the shower was not used. The Tenant said they waited until the Christmas season was completed and then they told the Landlord about the leak. The Tenant said they are not responsible for the leak in the bathroom or the damage it caused to the kitchen. The Tenant said this problem was a result of a construction issue when the unit was built.

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### Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

It is the Landlord responsibility to do both these report and if either report is not completed the Landlord is unable to establish the condition of the rental unit at the start or end of the tenancy. Consequently as the Landlord did not do a move in condition inspection report at the start of the tenancy the Landlord cannot establish proof that the Tenant damaged the rental unit or left the unit in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start of the tenancy, I dismiss the Landlords' application for damages to the unit, site or property without leave to reapply.

With respect to the Landlords' claim for damages because of the leak in the shower, I accept the Tenants' testimony that the shower leak was a construction issue and not a result of changing the shower head. The shower head was changed in May 2008 and worked without a leak until December 22, 2013. As well the plumber explained the problem with bending copper pipe to the Tenant and on the balance of probabilities; I accept this explanation as being the most likely cause of the leak. The Landlords' claim for \$1,113.86 is dismissed without leave to reapply.

Further the parties agreed that the Tenants have unpaid rent of \$1,881.70; therefore I award the Landlord their claim for unpaid rent of \$1,881.70.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,881.70	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,931.70
Less:	Security Deposit	\$ 950.00	
	Subtotal:		\$ 950.00
	Balance Owing		\$ 981.70

### Conclusion

A Monetary Order in the amount of \$981.70 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 28, 2014

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Residential Tenancy Branch