



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord on August 15, 2014, to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and Tenant. Each person gave affirmed testimony and acknowledged receipt of evidence submitted by the Landlord.

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

Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence in support of their claim which included copies of; a 10 Day Notice issued August 3, 2014; the tenancy agreement; a monetary order worksheet; a written submission; photographs; and receipts for work performed at the rental unit.

The Landlord submitted that the Tenant has occupied the rental unit since June 13, 2013 on a fixed term tenancy that ended February 28, 2014. He entered into a subsequent fixed term tenancy that began on March 1, 2014 and was set to end on

August 31, 2014. Rent of \$800.00 was due on or before the first of each month and the Tenant paid \$400.00 as the security deposit on or before June 13, 2013. The parties attended the move in condition inspection in June 2013 and the move out condition inspection on August 11, 2015.

The Landlord now seeks \$1,169.55 for unpaid rent for August, cleaning of the walls, carpet shampooing and repair of a broken interior window. Receipts for the repairs were provided in the Landlord's evidence.

The Landlord testified that when they attempted to negotiate another fixed term tenancy the Tenant wanted a shorter term or a month to month tenancy and the Landlord wanted a minimum of a six month term. When they were not able to reach an agreement the Tenant became upset and refused to pay the August 1, 2014 rent. As a result, the Landlord posted a 10 Day Notice to the Tenant's door on August 3, 2014. The Landlord submitted that the Tenant did not pay the rent and he chose to move out of the rental unit. The Landlord regained possession of the unit as of August 11, 2015, and as a result he was seeking the unpaid rent and loss of rent for the month of August 2015 in the amount of \$800.00.

Upon review of the damages being claimed, the Landlord testified that although the Tenant washed the walls, he had left streaks on the walls from either using dirty water or a dirty cloth. The Landlord asserted that those streaks had to be removed. As such, the Landlord hired a cleaner for five hours to re-clean the walls at a cost of \$100.00.

The Landlord submitted that the Tenant did not have the carpets professionally cleaned; which was required as per the tenancy agreement. A copy of the tenancy agreement was provided in evidence which stipulated at section 2.14 as follows:

*The Lessee agrees that the carpets shall be professionally cleaned at the end of the term of the Lease.*

The Landlord asserted that during the tenancy the Tenant had pushed articles onto the window sill against the window, as displayed in the Landlord's photographic evidence. The Landlord argued that the Tenant must have pushed too hard at one point which caused the interior pane of window glass to break. The Landlord is seeking to recover the cost of that window repair in the amount of \$124.46, as supported by the receipt provided in evidence.

The Tenant testified and confirmed that he did not pay the August 1, 2015 rent. He stated that he was of the opinion that he would be entitled to compensation equal to one month's rent because the Landlord told him he would have to move out if he did not sign a new tenancy agreement. After a brief discussion he stated that he now understood that that type of compensation was only payable if he had been served a 2 Month Notice to end tenancy for landlord's use.

In response to the damages being claimed the Tenant argued that he is of the opinion that the window glass broke as the result of the house shifting. He confirmed that he set articles on the windowsill but denied having broken the window.

The Tenant confirmed that he did not have the carpets professionally cleaned. He stated that he vacuumed them well but could not argue that he did not have them cleaned.

The Tenant disputed the claim for washing the walls and argued that he did not see streaking walls after they were finished cleaning. He argued that this claim was his word against the Landlord's agent's word because he had done the cleaning to the best of his ability.

In closing, the Landlord stated that there had been a condition inspection report form completed by his agent, however no copy had been provided in his documentary evidence. Also, the Tenant had not signed the inspection report form.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

#### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The evidence supports that the tenancy agreement was in full force and effect until August 31, 2014. Therefore, I find the Tenant breached section 26 of the Act by failing

to pay his rent that was due on August 1, 2014. Once the 10 Day Notice had been served the Tenant chose to move out of the rental unit prior to the effective date of the Notice. The Landlord regained possession of the unit on August 11, 2015; however, the Landlord was not able to re-rent the unit for August and suffered a loss of rent for the remainder of the month.

Based on the above, I find the Landlord has met the test for damage or loss, and I grant the Landlord's application for unpaid rent / loss of rent for August 2014 in the amount of **\$800.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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; and must return all keys to the Landlord.

Notwithstanding the Tenant's argument that he is of the opinion that the window cracked due to the house settling, I find the Landlord submitted sufficient photographic evidence to prove that articles had been placed up against the window. I further find that it was the action of placing such articles against the window which caused it to break.

It was undisputed that the Tenant did not have the carpets steamed cleaned at the end of his tenancy.

Based on the aforementioned I accept that the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit requiring cleaning to carpets, and damage consisting of a broken window. The Landlord submitted receipts proving the actual costs to clean the carpets and repair the window. As per the foregoing I find the Landlord has met the burden of proof and I award him costs for carpet cleaning and window repairs in the amount of **\$269.55** (\$145.09 + \$124.46).

Residential Policy Guideline # 1 stipulates that a tenant is responsible for washing scuff marks, finger prints, etc. off the walls. It does not stipulate that a tenant must perform extensive cleaning of all the wall surfaces.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

It was undisputed that the Tenant had washed the walls at the end of the tenancy. In the presence of the Tenant's disputed oral testimony that no streaks were left on the walls, and in absence of a move out condition inspection report form or photographic evidence to prove the contrary, I find the Landlord submitted insufficient evidence to prove his

claim for washing walls. Accordingly, I dismiss the Landlord's claim for wall cleaning, without leave to reapply.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent / Loss of August 2014 rent	\$ 800.00
Carpet cleaning & window repair	269.55
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,119.55
<b>LESS:</b> Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 719.55</u></b>

#### Conclusion

The Landlord has been awarded a Monetary Order for **\$719.55**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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: March 09, 2015

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Residential Tenancy Branch

