



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, MNSD, SS, FF

### Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, for authority to serve documents in an alternate manner, and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Landlords withdrew the application for authority to serve documents in an alternate manner,

The female Landlord stated that on October 08, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to each Tenant. The female Tenant stated that both Tenants have received these documents.

On December 09, 2016 the Landlords submitted 100 pages of evidence and a CD to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenants with the Application for Dispute Resolution. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 23, 2017 the Tenants submitted 5 folders of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to the Landlord on March 25, 2017. The female Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The female Landlord stated that sometime around March 15, 2017 the Landlords submitted two receipts to the Residential Tenancy Branch. The parties were advised that I have no record of this submission.

The female Landlord described the receipts, which I located in the Landlords' evidence package of 100 pages. As these receipts have been accepted as evidence for these proceedings, I find that I do not need to determine if they were also submitted on March 15, 2017.

### Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

### Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on November 01, 2015;
- at the end of the tenancy the monthly rent was \$1,345.00, which included a monthly hydro/internet charge of \$245.00;
- rent was due by the first day of each month;
- a security deposit of \$550.00 was paid;
- a condition inspection report was completed at the start of the tenancy;
- on September 03, 2016 the Tenants informed the Landlords, via email, that they would like to vacate the rental unit by September 30, 2016;
- the Landlords and the Tenants subsequently agreed, via email, that the tenancy would end on October 15, 2016; and
- the Tenants did not provide the Landlords with a forwarding address at the end of the tenancy.

The female Landlord stated that on September 08, 2016 she left a mutual agreement to end the tenancy at the rental unit in an effort to formalize their verbal agreement to end the tenancy on October 15, 2016, but the Tenants did not return this document. The female Tenant stated that they did not sign and return this document because they did not receive it.

The female Tenant stated that the rental unit was vacated on September 30, 2016. The female Landlord stated that she does not know when the rental unit was vacated. The parties agree that the Tenants sent the Landlords an email on October 01, 2016, in which they informed the Landlords the unit had been vacated.

The Landlords are seeking compensation for unpaid rent/utilities from October of 2016, on the basis that the Tenants did not give the Landlords proper notice to end the

tenancy. The female Landlord stated that the Landlords had located a party who was prepared to move into the unit on October 15, 2016 but that party did not move into the rental unit until October 30, 2016 due to the uncertainty of when this tenancy would end. The female Landlord stated that because the Tenants had not signed the mutual agreement to end the tenancy the Landlords could not be certain the rental unit would be vacant by October 15, 2016.

The Landlord and the Tenant agree that no rent was paid for October of 2016.

The female Landlord stated that the Landlords attempted to contact the Tenants on several occasions, via text message and email, for the purposes of completing a final inspection of the rental unit but the Tenants did not respond to those messages. The female Tenant stated that she does not recall if the Landlords sent emails or text messages regarding a final inspection.

At the hearing the Landlords withdrew their claim for unpaid rent/utilities from November of 2016 and I therefore heard no evidence regarding that claim.

The Landlords are seeking compensation, in the amount of \$4,236.44 for repairing the hardwood floor.

The Landlords and the Tenants agree stated that when this tenancy began the floor had been scratched by a cat in several places. The condition inspection report, which was submitted in evidence, indicates that there were dings and marks on the floor at the start of the tenancy.

The female Landlord stated that at the end of the tenancy that there were significantly more scratches on the floor, particularly in the hall and living room.

The female Tenant acknowledged that the floors were damaged during the tenancy. She believes that most of the damage occurred when they were moving out of the unit when boxes were pushed across the floor.

The Landlords submitted photographs of scratches on the floor which are consistent with boxes being pushed across the floor. The Landlords submitted an estimate for repairing the floor. The female Landlord stated that the floors have not yet been repaired and that they were re-finished approximately 7 or 8 years ago.

The Landlords are seeking compensation, in the amount of \$119.70, for cleaning the rental unit. The Landlords contend that the rental unit required additional cleaning and the Tenants contend that the rental unit was left in reasonably clean condition.

The Tenants submitted several photographs of the rental unit, which show the rental unit in reasonably clean condition. The Landlords submitted photographs of the rental unit, taken from a closer view than the Tenants' photographs, which show that lights, blinds, and window sills have not been dusted; dirt and stains on the garage floor; the

underside of the hood fan needs cleaning; a small amount of food debris on a cupboard door; the floor needed additional cleaning; and a small amount of dirt has been left in various appliances.

The Landlords submitted a cleaning invoice, in the amount \$119.70.

The Landlords are seeking compensation, in the amount of \$125.00, for landscaping.

The Landlords and the Tenants agree there is a term in the addendum to the tenancy agreement that required the Tenants to “keep the area on the top portion of the property clean, tidy, and cleared of weeds”. The term specifies the areas that the Tenants were required to maintain.

The Landlords contend that the yard was not left in good condition. The Tenants contend that the yard was left in good condition, with the exception of the need to remove leaves that had recently fallen due to the fact that the tenancy ended near the beginning of fall.

The Landlord submitted an invoice for weeding the “gravel, cobble” and weed whacking, in the amount of \$125.00. Both parties submitted images of the exterior of the rental unit.

The Landlords are seeking compensation, in the amount of \$219.99 plus tax for replacing the stove hood fan. The female Landlord stated that the glossy finish of the hood fan was stripped during the tenancy. The Landlords submitted photographs of the hood fan, which show the glossy finish has been removed.

The female Tenant stated that the hood fan had a glossy finish at the end of the tenancy. She stated that this hood fan is over 11 old or older.

The female Landlord stated that an estimate for replacing the hood fan was included in the Landlords’ evidence package. Neither I nor the Tenants could I locate the estimate in our evidence packages. The female Landlord stated that she does not have her full evidence package with her so she could not assist us in locating this estimate.

At the hearing the Landlords withdrew their claim for painting/filling holes and their claim for replacing the keys and I therefore heard no evidence regarding those claims.

### Analysis

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that the Landlord gave notice to end this tenancy in accordance with sections 46, 47, 48, 49, 49.1, and 50 of the *Act*.

Section 45(1) of the *Act* authorizes a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(4) of the *Act* stipulates that a notice to end tenancy pursuant to section 45 of the *Act* must comply with section 52 of the *Act*. Section 52 of the *Act* stipulates that to be effective a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice. As the email dated September 03, 2016, in which the Tenants informed the Landlords of their intent to end the tenancy, was not signed, I find that this email was not an effective notice to end tenancy.

As neither the Landlord nor the Tenant gave proper notice to end this tenancy, I find that the tenancy did not end in accordance with section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. The evidence shows that on September 05, 2016 the female Landlord sent an email to the Tenants in which she asked them if they were willing to move out by October 15, 2016 in exchange for only having to pay ½ month's rent. The evidence shows that on September 05, 2016 the female Tenant responded, via email, and informed the Landlords that they were agreeable to the suggestion. On the basis of these emails, which were submitted in evidence, I find that the parties mutually agreed to end the tenancy, effective October 15, 2016.

In concluding that the parties mutually agreed to end the tenancy on October 15, 2016 I have placed little weight on the fact the parties did not sign a Mutual Agreement to End Tenancy. The *Act* does not specify that a mutual agreement to end the tenancy has to be completed on the form generated by the Residential Tenancy Branch. Regardless of the fact the Tenants did not respond to many of the emails sent by the Landlords, I find that the emails exchanged by the parties on September 05, 2016 sufficiently convey the intent of both parties.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence that the Tenants informed the Landlords that they vacated the rental unit, effective October 01, 2016, I find that the tenancy actually ended on October 01, 2016, pursuant to section 44(1)(d) of the *Act*, which is the date the unit was vacated and the Landlords had the legal right to take possession of the unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Landlords and the Tenants mutually agreed to end the tenancy on October 15, 2016 with the understanding that the Tenants would only have to pay  $\frac{1}{2}$  of the rent for October, I find that the Tenants were only obligated to pay \$672.50 in rent for October of 2016. On the basis of the undisputed evidence that the Tenants paid no rent for October of 2016, I find that they must pay \$672.50 to the Landlords in rent for that month.

While I accept that the tenancy with the new occupants did not proceed on October 15, 2016 because the Landlords were not certain that they had a mutual agreement to end the tenancy on October 15, 2016, I find that they should have accepted the email of September 05, 2016 as confirmation that they had a mutual agreement to end the tenancy. While I find that the Landlords acted reasonably by not proceeding with the new tenancy on October 15, 2016 because they were not certain that this tenancy was ending on October 15, 2016, I find that the Tenants should not be held liable for this abundance of caution.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing 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 Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the damage to the floors that occurred during the tenancy. In reaching this conclusion I was heavily influenced by the female Tenant's testimony that the floors were damaged when boxes were slid across them and by the photographs of the scratches on the floor which, in my view, exceed normal wear and tear. I therefore find that the Landlord is entitled to compensation for repairing the floors.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of hardwood floors is 20 years. The evidence shows that the floors were refinished 7 or 8 years ago and I therefore find that the floors had been refinished approximately 7 years before this tenancy ended. I therefore find that the floors had depreciated by 35% by that point and that the Landlords are entitled to 65% of the estimate for repairing the floors, which in these circumstances is \$2,753.69.

On the basis of the photographs/electronic images submitted by the Landlords, I find that the interior of the rental unit required additional cleaning to bring it to the standard of "reasonably" clean. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the unit reasonably clean and I grant the Landlords application for compensation for cleaning, in the amount of \$119.70.

On the basis of the electronic images submitted by the Landlords, I find that the yard needed additional weeding and weed eating. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the yard weeded and I grant the Landlords application for compensation for yard maintenance, in the amount of \$125.00.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant whenever compensation for damages is being claimed.

Even if I concluded that the Tenants damaged the hood fan, which was at least 11 years old, I would dismiss the Landlords' claim for replacing the fan as they have failed to establish the true cost of replacing the fan. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' claim that it would cost \$219.99 to replace the fan.

When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present estimates or receipts.

Although the female Landlord testified that she submitted an estimate for replacing the hood fan, the Landlords have submitted insufficient evidence to corroborate that testimony. I note that the Landlords did not have a copy of the estimate with them during the hearing; the Tenants could not locate a copy of the estimate in their evidence package; and I could not locate a copy of the estimate in my evidence package. While I do not believe that the female Landlord was attempting to mislead me with this testimony, I find it entirely possible that she mistakenly believes this estimate was submitted in evidence. As an estimate has not been presented as evidence, I dismiss the claim for replacing the hood fan.

I find that the Landlords' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$3,770.89, which includes \$672.50 in rent; \$2,753.69 for repairing the floors; \$119.70 for cleaning; \$125.00 for yard maintenance; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$550.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$3,220.89. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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 *Act*.

Dated: April 05, 2017

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Residential Tenancy Branch