



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

MNR, MND, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to non-payment of rent and utilities and costs to clean and repair the rental unit. Both parties were present at the hearing, gave affirmed oral evidence and had the opportunity to respond to the evidence of the other party.

### Issues(s) to be Decided

Has the landlord established a monetary claim due to non-payment of rent and utilities and due to costs to clean and repair the rental unit? Does the landlord have the right to retain the tenant's security deposit plus interest against alleged damage to the rental unit?

### Background and Evidence

The landlord provided a written statement as part of her application for dispute resolution which she read as part of her oral testimony. The landlord did not provide any documentary evidence in support of this application.

The parties agree that this tenancy began on November 1, 2008 for the monthly rent of \$950.00 and a security deposit of \$475.00. No move-in or move-out conditions inspections were completed in writing despite the requirements of sections 23, 24, 35, & 36 of the *Act*.

The tenant conceded that he owed the landlord money related to unpaid rent and utilities for the sum of \$2,370.45 comprised of the following:

Outstanding rent owed from January 1 to March 31, 2009 (\$2,850 owed less \$850.00 paid partially on January 31, 2009 and February 10, 2009)	\$2,000.00
Recovery of filing fee paid for this application by landlord.	\$50.00



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<b>Total</b>	<b>\$2,370.45</b>
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The tenant also conceded that he damaged a wall and left behind debris and garbage, but questioned how these problems cost \$450.00 or the equivalent of his security deposit. The tenant also disputed the landlord's claim that she was required to paint the rental unit and stated that the rental unit was not painted when he moved into the unit.

## Analysis

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*.

I grant the landlord's application in part. The landlord has failed to corroborate or provide any evidence in support of this application; therefore, I have accepted amounts claimed by the landlord which the tenant did not dispute. I also note that the landlord has failed to comply with the *Act* by conducting move-in and move-out condition inspections reports in writing and therefore has extinguished any right to retain the tenant's security deposit.

I also find that the landlord has failed to substantiate the costs which she claims she spent the tenant's security deposit on. I also note that the landlord has no right under the *Act* to "spend" a tenant's security deposit on any alleged damages unless they have the written consent of the tenant or an Order from a Dispute Resolution Officer after filling an application for dispute resolution. As a result, I will accept based on the oral testimony of the parties and the tenant's statement that he did leave debris and garbage behind that the landlord has established the sum of \$52.56 in costs to clean the rental unit. This is the only sum claimed by the landlord that was substantiated by a receipt.

I find that the landlord has established a total monetary claim for the sum of **\$2,423.01**. Although the landlord extinguished her right to retain the tenant's security deposit, section 72 of the *Act* allows a monetary claim established by a landlord to be offset by the tenant's security deposit in the appropriate circumstances. Therefore, I Order that the landlord may retain the tenant's security deposit plus interest of \$476.19 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balanced owed of **\$1,946.82**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.



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## Conclusion

I grant the landlord a monetary Order for the remaining balanced owed of **\$1,946.82**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: July 20, 2009.

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Dispute Resolution Officer