



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for a monetary Order for damages to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This tenancy commenced on March 1, 2007 and ended on September 30, 2009. A deposit in the sum of \$837.50 was paid on February 15, 2007.

The landlord is claiming the following damages:

Replace microwave	400.00
Paint (filling)	178.50
Painting	1,200.00

Cleaning	175.00
Water bill	64.31
	3,017.81

The landlord's Application included an amount that assumed a deduction in the amount of the deposit paid.

A move-in condition inspection was completed and the tenants acknowledge they failed to attend the move-out inspection.

The microwave oven door was broken and the landlord has estimated what the replacement cost might be.

The move-in condition inspection does not reference the state of the yard; however, the tenancy agreement includes terms that required the tenants to water the lawn, taking into account imposed water restrictions. The landlord was to fertilize the lawn. The landlord is planning on replacing the lawn as it died and was overtaken by weeds.

The landlord expects tenants to fully repair any holes left in the walls caused by hanging pictures. There was some drywall damage on the corners of walls. A receipt for filling and other maintenance items was submitted as evidence.

The landlord painted this unit after the nail holes and other repair work was completed. The unit had been last painted in approximately November 2006.

The tenants provided photographic evidence taken on the day they moved out of the rental unit, showing all of the major areas of the unit. The tenant's hung approximately fifteen pictures in the home. The cracked microwave door had been reported to the landlord who told them it would not be replaced as it still functioned. The door was functional when the tenants moved out, but was cracked. The tenants believed the microwave was not new at the time they moved into the unit and that it was at least 3 years old.

The tenants adhered to the two day per week watering restrictions that were in place during the summer of 2009, which was very dry and caused a number of lawns in the area to die. The winter of 2008 – 2009 saw heavy snowfall which caused moss to grow in the backyard, due to suspected poor drainage. The tenants attempted to use moss killer, but it did not work. The lawn was not fertilized by the landlord during any time of the tenancy.

The tenants hung approximately fifteen pictures and did fill and sand the holes, however they did not paint.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the microwave, I find that the crack to the door can be attributed to normal wear and tear. The microwave was beyond any period of expected warrant and the problem had been reported to the landlord who chose not to repair the door. There is no evidence before me that the tenants were negligent or purposely caused damage to the microwave; therefore, the claim for replacement is dismissed.

There is no evidence before me of the state of the lawn at the start of the tenancy. I find that, in the absence of any evidence that the tenants were negligent, that the claim for lawn replacement is dismissed. I also base this decision on the lack of any evidence of the state of the lawn at the end of the tenancy or any professional submission as to the cause of the lawn dying and accept that it is very likely due to the dry conditions, combined with watering restrictions which the tenants were bound to respect.

Residential Tenancy Branch Policy suggests that tenants may hang pictures according to any special instructions given by the landlord. Tenants are not required to fill and paint holes, unless there is an excessive number or the holes are large. There is no evidence before me that the tenants did anything other than hang a reasonable number of pictures and no evidence that chips to the drywall were anything other than normal wear and tear that can be expected to occur during a 2.5 year tenancy. Therefore, the claim for filling holes and painting is dismissed.

The tenants agreed to allow the landlord to deduct \$175.00 from their deposit for cleaning costs.

The landlord acknowledged that the tenants have now paid the water bill.

The landlord is holding a deposit plus interest in the sum of \$861.23.

As the landlord's claim has merit I find the landlord is entitled to filing fee costs.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$225.00, which is comprised of \$175.00 cleaning costs and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The balance of the landlord's claim for compensation is dismissed without leave to reapply.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$275.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposit and interest held in trust by the landlord; **\$636.23**. In the event that the landlord not comply with this Order, it may be served on the landlord, 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: February 10, 2010.

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Dispute Resolution Officer