



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order for \$390.86, and a request to retain the security deposit towards the claim. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

### Background and Evidence

The applicant testified that:

- The tenant did not return the keys and therefore they had to replace the locks for the security of the new tenants.
- The tenants left the bathroom and refrigerator very dirty and a piece of meat had been hidden in the sofa and allowed to rot and as a result the rotting smell had infiltrated the sofa. Therefore some extra cleaning was required.

- The tenants kept the rental property in a very dirty condition and as a result a cockroach infestation occurred. Since there were three tenants in this rental property they believe the respondent should be responsible for one third of the cost of fumigation.

The applicants are therefore requesting an order as follows:

Lock replacement costs	\$63.84
Cleaning	\$48.53
One third of \$201.60 fumigation cost	\$67.20
Filing fee	\$50.00
Total	\$279.57

The respondent testified that:

- He had arranged with the landlord to return the keys on August 31, 2010, however when he returned to the suite to leave the keys he found that the locks had been changed, and therefore he assumed the landlords no longer needed the keys.
- He believes the rental unit was left reasonably clean, and he was told by his subtenant that she would pay the landlord for the cost of cleaning the sofa, as she had left the meat in the sofa.
- He does not believe they should have to pay for fumigation, as he does not believe the cockroach infestation was caused by him. He had noticed bugs in the rental unit shortly after the beginning of the tenancy, and therefore believes the infestation already existed.

### Analysis

It is my decision that I will allow the claim for changing the locks, because although the tenant claims he attempted to return the keys, the keys were not returned and therefore it's reasonable that the landlord changed the locks. I will not however allow the claim for the \$50.00 key penalty. Claims under the Residential Tenancy Act are meant to be

compensatory and therefore a claim that is simply a penalty is not allowed unless specifically allowed under the Residential Tenancy Act or Residential Tenancy Regulations.

I will allow the claim for cleaning, because the Residential Tenancy Act requires that the tenants maintain a reasonable state of cleanliness and it is my finding that in this case the rental unit was left in need of extra cleaning.

I deny the claim for the cockroach of fumigation cost, because it is my finding that the applicant has not met the burden of proving that the cockroach infestation was caused by the tenants. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met. Further there were 3 rental units in this property that all shared the common area and therefore even if the cockroach infestation was caused by one of the tenants, there is no way of telling which tenant caused the infestation.

I will allow one half the cost of the filing fee, because I have allowed a portion of the landlords claim.

Therefore the total amount of the claim that I have allowed is:

Lock replacement	\$63.84
½ Filing fee	\$25.00
Total	\$129.37

However since the tenant has already agreed to a \$50.00 deduction from his security deposit for a move out fee I will deduct \$50.00 from the above claim leaving a balance of \$79.37, because the Residential Tenancy Regulations only allow a move out fee if it is a fee that is being charged to the landlord by a Strata Corporation.

Therefore if the landlord does collect move out fee it can only be used in a compensatory manner and applied towards any costs or losses.

The tenants agreed to deduction from the security deposit totalling \$76.89, and I have allowed a further amount of \$79.37, for a total of \$156.26

Conclusion

I hereby order that the landlord may retain \$156.26 of the tenants \$247.50 security deposit, and I have issued an order for the remaining \$91.24 to be returned to the tenant.

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 03, 2011.

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Residential Tenancy Branch