



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to the landlord's application seeking to retain the security deposit and recover the filing fee for the cost of this application.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Should the landlord be allowed to retain the deposit and recover the filing fee for the cost of this application?

### Background and Evidence

This tenancy began in March 2007 and ended on June 30, 2010. The tenant paid a \$1,000.00 security deposit on March 5, 2007. The tenant says he provided his forwarding address to the landlord sometime in February, 2011. The landlord filed this application on February 14, 2011. The landlord says the tenant caused damage to the rental property and did not clean the rental property well at move out. The landlord had a list of various repairs and cleaning costs but claims only the following:

MT Glass & Renovations Ltd. For services rendered for mudding, sanding painting holes around the house, replacement of interior doors, repairing closet doors, fixing cabinetry and repairing ceiling	\$605.00
Garbage removal	155.00
Window repair	200.00
Cleaning costs	200.00
Total	\$1160.00

The tenant agrees with the costs to fill in the walls in the back bedroom which were not done (the landlord estimates this portion of the costs to be \$150.00). The tenant also

agrees to a countertop repair of \$50.00. The tenant testified that all the other damages were present when he initially moved in.

The landlord disagrees. She says the tenant caused the damages. The landlord says the tenant attempted to repair the window himself but added a single pane window instead of a double paned window. The landlord says the tenant caused damage to the basement ceiling by allowing the upstairs toilet to overflow. Further that he did not clean the suite in the home which the tenant rented out. Finally the landlord says they were forced to pay \$155.00 to have garbage removed from the compost on the property. With respect to this issue there was an extra charge to remove plastics and other non-compostable materials from the pile of rubbish on the property. The landlord says the tenant had removed an above-ground pool and thrown it into the compost pile.

The tenant testified that his sister rented the house prior to his occupancy; she was the owner of the pool and she took it with her when she vacated prior to his moving in. The tenant says all the windows in the rental unit are single pane and he never attempted to repair any of them. The tenant says the toilet did not function properly and it did overflow from time to time and the landlord refused to repair it. Eventually the overflow caused some damage to the ceiling in the basement and mould. The tenant says the closet doors fell off frequently, the window coverings were filthy and there was a wood bug problem in the house that the landlord failed to treat.

### Analysis

Condition Inspection Reports, which are the responsibility of the landlord, were not prepared. Condition Inspection Reports are helpful in determining the difference, if any, in the condition of a rental unit at the start of a tenancy as compared to the end of the tenancy.

The only damage the tenant agrees he caused is the damage to the walls in the back bedroom which the landlord says cost \$150.00 to repair and the tenant has agreed that the countertop was damaged, the landlord says this cost \$50.00 to repair. I will allow these claims based on the tenant's submissions.

With respect to the balance of the claims made the onus or burden of proof is on the party making the claim. When one party provides testimony/evidence of the events or claims in one way, and the other party provides an equally probable but different testimony/evidence of the claims/events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case

here. I find that the landlord has failed in her burden and proving the balance of her claims and they are therefore dismissed.

The landlord may deduct \$150.00 from the security deposit she holds on the tenant's behalf. The landlord must return the balance of the deposit in the sum of \$850.00 forthwith.

As the landlord has not been entirely successful in her claims I decline to award recovery of the filing fee.

### Conclusion

The tenant has been provided with a monetary Order in the above terms. If the landlord fails to return the remainder of the deposit as set out above, the tenant may enforce the Order as an Order of the Provincial Court of British Columbia.

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*.

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