



# 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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application to retain the deposit and to recover the filing fee from the tenant 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. I have considered all of the evidence and testimony provided.

### Preliminary matter

The application was amended to reflect the claim indicated in the details of the dispute section of the application, to include a claim for damage to the rental unit.

At the conclusion of the hearing the landlord stated that there had been several prior hearings; this was confirmed by the tenant. The parties were informed that those decisions would be reviewed with the intent to ensure that I would not be altering decision matters that had been previously issued.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,350.00 for damage to the rental unit?

May the landlord retain the deposit in satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

### Background and Evidence

At the start of the hearing the landlord was asked to detail her dispute as the total of receipts submitted as evidence exceeded the amount included in the application. The landlord requested compensation as follows:

- Painting - \$1,018.26;
- Glass repair - \$285.60; and
- Light bulbs - \$35.47.

The tenancy commenced in September 2008, a deposit in the sum of \$1,350.00 was paid. The tenancy ended on February 8, 2010. A condition inspection report was completed at move-in; a report was not completed at the end of the tenancy. A copy of the move-in report was not provided as evidence.

The rental unit was painted by the landlord at the end of 2006; after the tenant moved out the landlord painted the unit themselves. A typed record of labour provided by the landlord over 3 days in March, 2010, was supplied as evidence of the claim for painting.

The landlord provided a glass repair receipt dated March 17, 2010 for repair of the garage door windows and an interior door. The tenant acknowledged breaking the interior glass in a French door but stated that the garage door window was broken at move-in. The tenant stated he believed 1/3 of the glass repair cost was reasonable compensation.

The landlord stated that a number of light bulbs in the unit were missing or burnt out; receipts for the cost of light bulbs was submitted as evidence. The tenant stated that he replaced 8 to 10 bulbs in a decorative fixture but the fixture was malfunctioning, so the bulbs appeared to be burnt out. The tenant stated at the start of the tenancy a number of bulbs were either burnt out or missing.

The landlord stated a number of telephone messages were left with the tenant, in an attempt to arrange a move-out condition inspection; no final written notice was given to the tenant.

The landlord received the tenant's forwarding address as part of the tenant's application made requesting return of the deposit. A decision issued on March 1, 2011 (file XXXXXX) found the tenant's application requesting return of the deposit was premature. A decision issued on February 23, 2011 (file xxxxxx) found in favour of the landlord and a monetary order in the sum of \$5,400.00 was issued; the deposit was not deducted from that monetary award.

The landlord stated that she has proceeded via BC Small Claims Court in relation to enforcement of the monetary Order.

#### 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.

The landlord is required to provide the tenant with at least 2 opportunities to complete a move-out condition inspection. The approved form providing written Notice should be used when giving the tenant a final date for the inspection; this did not occur and a move-out condition inspection was not completed.

Residential Tenancy Branch policy suggests the useful lifespan of paint in a rental unit is 4 years; I find that to be a reasonable stance. The unit was last painted in late 2006 and the landlord repainted the unit in March, 2010; 3 years and 3 months later. There is no evidence before me that the tenant caused so much wear and tear that the unit required painting prior to the end of 2010. Therefore, I find on the balance of probabilities, that the claim for the landlord's labour is dismissed. Further, there was no evidence before me such as photographs that showed the state of the walls at the end of the tenancy or after the painting was completed.

In the absence of a condition inspection report and, based on the disputed testimony of the parties, I find, on the balance of probabilities, that the tenant did replace light bulbs

and that the fixture may have been malfunctioning. Therefore, the claim for light bulbs is dismissed.

The tenant has agreed that he damaged an interior door. In the absence of a condition inspection report, I find, on the balance of probabilities, that the landlord is entitled to 1/3 of the cost of the glass repair in the sum of \$95.20; the balance of the claim is dismissed.

I find that the landlord's application has some merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

In relation to the deposit held in trust; the landlord is entitled to retain \$95.20 from the \$1,350.00 deposit plus the \$50.00 filing fee, leaving a balance in the sum of \$1,204.80.

Pursuant to section 62(3) of the Act, I find that the landlord is entitled to retain the balance of the deposit, \$1,204.80 plus interest in the sum of \$7.64, in partial satisfaction of her previous claim (#####.) The landlord and tenant may provide a copy of this decision to the BC Small Claim Court as evidence that the landlord has been provided with the authority to retain \$1,204.80 plus \$7.64 interest, toward the compensation Ordered on February 23, 2011.

If the tenant has paid the landlord in full and any balance of the deposit is remaining, I Order the landlord to return any balance, forthwith, to the tenant.

The tenant is at liberty to submit an application requesting an Order for any balance remaining of the \$1,204.80 deposit; if the landlord's previous Order has been paid in full.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$145.20, which is comprised of \$95.20 in damage to the unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will retain this sum from the deposit held in trust; leaving a deposit plus interest balance in the sum of \$1,212.44.

The landlord will be retaining the balance of the tenant's security deposit plus interest in the amount of \$1,212.44, in partial satisfaction of the monetary claim and Order issued on February 23, 2011 (file #####.)

Any balance of the deposit that remains, after the landlord's Orders have been fully paid, will 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: June 21, 2011.

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Residential Tenancy Branch