



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD and FF

### Introduction

This hearing was convened on the landlords' application of November 14, 2011 for a Monetary Order for damages to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance found to be owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain all or part of the security deposit in set off.

Claims in damages require that several factors be taken into account: The comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenant, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

### Background, Evidence and Analysis

This tenancy began on August 1, 2010 and ended on October 31, 2011. Rent was \$1,150 per month and the landlords hold a security deposit of \$575.

During hearing, the landlords submitted and the tenant and her advocate responded to the following claims on which I find as follows:

**Patching, painting, carpet and miscellaneous cleaning and repairs - \$343.40.** The parties advised that they had reached a consent agreement on these items and I include this amount in the balancing of accounts.

**Replacement of vinyl deck covering - \$3,800.** This claim arises from the agreed to fact that the tenant had placed a green carpet on the deck which, as a result of it becoming soaked, had left a green stain said to be about 4 x 5 feet in size on the decking. The landlords submit that the staining combined with efforts to remove the stain by both the tenant and the landlords resulted in a compromise of its water proofing. The landlords submitted a letter from a cleaning supply company concurring with that view. A similar view was expressed in an email submitted by the landlords from one of two vendors who submitted quotations for removal and replacement of the deck covering.

The tenant and her advocate noted that the carpet had been placed under an awning, and that a contributing factor to the staining has been the fact that the deck was subject to pooling, an observation supported in part by the landlords' having provided the tenant with a squeegee at the beginning of the tenancy. The tenant stated the staining had appeared when she returned from a brief time away, found the carpet soaked, and hung it over the railing to dry.

The tenant's advocate pointed out that the 10-year warranty submitted by the landlords listed water pooling as among the items that could void the warranty.

The tenant submitted a letter from a stone mason who stated that he had several years experience working with the vinyl product and that, in 30 minutes work using a product recommended by the manufacturer, he had removed 80 per cent of the stain and expressed the view that the primary damage to the covering was the result of normal wear and tear. Another commercial service provider in construction and repair, including vinyl deck coverings and who inspected the site stated that there is a problem with the slope of the deck which would have contributed to the pooling. He suggested that a bleaching product used by the landlords would have harmed the deck more than the staining.

As a matter of note, a photograph of the area in question taken at the end of the tenancy showed only a slight difference between the stained area and the rest of the deck.

As the hearing progressed, the tenant's advocate, an insurer, advised that the landlords had been offered \$500 as an "appearance allowance" to settle the matter of the deck and that this offer remained in place.

The landlord's said they had not been aware of that offer, although the advocate was certain his office had forwarded it.

Taking into account:

1. That the vinyl is seven years old according to the landlords;
2. The differing professional opinions submitted by both parties;
3. Photographic and oral evidence of the outside stairs paint worn to the wood, paint peeling off window sills and trouble with a door lock corrected by the tenant, indicating some laxity in landlord maintenance;
4. And, the fact that the landlords noted the problem with staining on October 3, 2011, but made no effort to instruct or collaborate with the tenant on cleaning materials and methods in an effort to minimize any potential damage or loss as required under section 7 of the *Act*:

I find the offer by the tenant's advocate of \$500 for an "appearance allowance" to be patently fair and reasonable and I set that as the amount owed by the tenant to the landlords on the issue of the deck covering.

As the application has only partially succeeded, I find that the \$50 filing fee should be shared equally between the parties.

Thus, I find that accounts balance as follows:

Patching, painting, carpet and misc. as agreed	\$343.40
One-half of filing fee	<u>25.00</u>
Sub total	\$868.40
Less retained security deposit	- <u>575.00</u>
<b>TOTAL remaining balance owed to landlords by tenant</b>	<b>\$293.40</b>

Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order for \$293.40, enforceable through the Provincial Court of British Columbia, for service on 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 01, 2012.

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Residential Tenancy Branch