



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD and FF

### Introduction

This application was brought by the landlord on December 6, 2011 seeking a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claim for unpaid rent and filing fee, and authorization to retain the balance owed from the security deposit. .

### Background, and Evidence

This tenancy began on July 1, 2011 and ended on or about November 29, 2011 pursuant to a Notice to End Tenancy for unpaid rent dated November 16, 2011. Rent was \$1,750 per month and the landlord holds a security deposit of \$875 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the tenant had withheld \$400 of the rent due on November 1, 2011 because the tenant had done painting and repair work to the rental unit and, in fact, had submitted a personal invoice to the landlord for the \$400 and a cheque for \$1,350 for the balance of the November rent.

The landlord gave evidence, with which the tenant concurred, that there had been no written agreement between the parties that they tenant could exchange labour and materials in lieu of rent.

The landlord stated that the tenant had done so on previous occasions, and while she had accepted deductions from the rent, she had instructed that the tenant not do repairs or improvements to the rental unit again without prior consent.

### Analysis

A rental agreement is a binding contract that can only be amended with the consent of both parties. In the present matter, the tenant contracted to pay the landlord \$1,750 per month and that is a material term of the agreement.

The essential question is not whether the tenant did the work claimed or the value of it, but whether the landlord had agreed to the exchange of labour and materials for rent. I find that the landlord did not agree and that she is entitled to the full \$1,750 for the November rent as specified in the rental agreement.

Having found merit in the landlord's application, I further find that she is entitled to recover the filing fee for this proceeding from the tenant.

As authorized under section 72(2)(b) of the Act, I direct that the landlord shall retain the amount owed to her from the tenant's security deposit and return the remainder forthwith..

Thus, I find that accounts balance as follows:

<b>Tenant's Credit</b>		
<b>Award to Landlord</b>		
Rent shortfall for November 2011	\$400.00	
Filing fee	<u>50.00</u>	
Sub total	\$450.00	- 450.00
<b>TOTAL remaining security deposit due tenant</b>		<b>\$425.00</b>

### Conclusion

The landlord is authorized to retain \$450 of the tenant's security deposit and ordered to return the balance of \$425.00.

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$425 for service on the landlord if necessary.

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 16, 2012.

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Residential Tenancy Branch