



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND, MNSD, FF / MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property; retention of the security deposit, and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting the double return of the security deposit, and recovery of the filing fee.

The landlord participated in the hearing and gave affirmed testimony. Despite scheduling of the hearing in response to applications by both parties, the tenant did not appear. The landlord confirmed that he received the tenant's application for dispute resolution and notice of hearing (the "hearing package").

As to the landlord's service of the hearing package on the tenant, he testified that it was sent by registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website confirms that the package was "successfully delivered."

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the initial term of tenancy was from September 1, 2009 to August 31, 2010. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$1,400.00 was due and payable on the first day of each month, and a security deposit of \$700.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Pursuant to notice given by the tenant, tenancy ended on March 31, 2012, and a move-out condition inspection report was completed with the participation of both parties on

April 2, 2012. The tenant provided her forwarding address on the move-out condition inspection report on that same date.

On the occasion of the move-out condition inspection, the parties were unable to agree in regard to the landlord's proposed retention of any portion of the security deposit to offset costs claimed by the landlord for certain repairs. Subsequently, fifteen (15) days later on April 17, 2012, the landlord filed an application for dispute resolution seeking, in part, to retain the security deposit. One day later on April 18, 2012, the tenant filed an application for dispute resolution seeking, in part, the double return of the security deposit.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

The various aspects of the respective claims and my findings around each are set out below.

### TENANT'S CLAIM

**\$1,400.00: the double return of the security deposit.** Section 38 of the Act addresses **Return of security deposit and pet damage deposit.** In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that as the tenant provided her forwarding address on April 2, 2012, and as the landlord filed an application to retain the security deposit on April 17, 2012, which is exactly fifteen (15) days later, the tenant has not established grounds for entitlement to the double return of the security deposit.

**\$50.00: filing fee.** As the tenant has not succeeded in establishing entitlement to the double return of the security deposit, and as the tenant failed to attend the hearing scheduled in response to her application for dispute resolution, and in response to being served with the landlord's hearing package, the tenant's application to recover the filing fee is hereby dismissed.

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LANDLORD'S CLAIM

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

\$550.00: repairs to small gouge and long cut in linoleum at entrance to 1<sup>st</sup> bathroom.

The landlord testified that the unit was new when he himself began living there in October 2007. Approximately two (2) years later on September 1, 2009 the tenant moved in and lived there for 31 months until March 31, 2012. In summary, by the end of tenancy the linoleum had sustained four (4) years and seven (7) months worth of wear and tear.

The landlord also testified that the cost claimed for this aspect of his application was never actually incurred, and after a couple of months following the end of tenancy the unit was sold.

For all of the above reasons, I find that the landlord has not established entitlement to any portion of the amount claimed, and this aspect of the application is, therefore, hereby dismissed.

\$150.00: repairs to drywall damage at entrance to closet in 2<sup>nd</sup> bedroom. For reasons virtually identical to the reasons set out above, this aspect of the landlord's application is hereby dismissed.

\$50.00: light bulb replacement in 1<sup>st</sup> & 2<sup>nd</sup> bathroom & kitchen. As the move-out condition inspection report includes no reference to burnt out light bulbs in the 1st bathroom, this aspect of the application is hereby dismissed.

The move-out condition inspection report in combination with photos taken in the 2nd bathroom, lead me to conclude that only 2 of the original 8 light bulbs were functioning at the end of tenancy, such that the landlord was required to replace six (6) light bulbs. I find that as the cost of one (1) box containing two (2) light bulbs is \$3.78, the landlord has established entitlement to **\$12.70\***, which is comprised of \$11.34 for the light bulbs (3 x \$3.78) plus tax of \$1.36 (12%).

On the basis of information set out on the move-out condition inspection report and receipts submitted in evidence, I find that the landlord has established entitlement to **\$5.02**, comprised of \$4.49 for the cost of one (1) light bulb, plus tax of \$0.53.

**\$50.00**: *filing fee*. As the landlord has achieved a limited measure of success with his application, I find that he has established entitlement limited to recovery of **\$25.00\***, which is half the filing fee.

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In summary, I find that the landlord has established entitlement in the total amount of **\$42.72** (\$12.70 + \$5.02 + \$25.00). I order that the landlord may withhold this amount from the security deposit of \$700.00.

I order the landlord to FORTHWITH return the balance of the security deposit to the tenant in the amount of **\$657.28** (\$700.00 - \$42.72), and I hereby issue a **monetary order** in favour of the tenant to that effect.

#### Conclusion

I hereby order that the landlord may withhold **\$42.72** from the security deposit.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of the balance of the security deposit which is **\$657.28**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

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 14, 2012.

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Residential Tenancy Branch