



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for authority to retain the tenant's security deposit in satisfaction of their monetary claim and to recover the filing fee for the application.

The landlord's agent appeared and gave affirmed testimony.

The landlord submitted that the tenant was served with the application for dispute resolution and Notice of Hearing by registered mail on April 14, 2012. The landlord supplied testimony and evidence of the tracking number of the registered mail envelope to the tenant as well as evidence of a successful delivery of the registered mail.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled for authority to retain the tenant's security deposit and to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on January 1, 2011, continued thereafter on a month to month basis until it ended on or about March 31, 2012, monthly rent was

\$1410.00 and the tenant paid a security deposit of \$705.00 on or about December 23, 2010.

The landlord's monetary claim is in the amount of \$576.00, comprised of painting for \$190.00, cleaning in the amount of \$156.80, carpet cleaning for \$95.20, and blind cleaning for \$134.00. The landlord is also claiming \$50.00 for recovery of the filing fee.

In support of his application, the landlord submitted that it was necessary to have certain walls in the rental unit repainted due to the tenant's spotty painting he had done himself; additionally it was necessary to clean the rental unit, carpet and blinds, due to the condition of these items at the end of the tenancy. The landlord contended that the state of the items listed was beyond normal wear and tear.

The landlord stated that if their application was successful, they would return the balance of the tenant's security deposit.

The landlord's relevant evidence included the tenancy agreement, a move-in and move-out condition inspection report, photos of the rental unit and receipts for work performed.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of the tenant who was duly served, the landlord's evidence will be the preferred evidence.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

I find the landlord provided sufficient, uncontradicted evidence of the unclean state of the rental unit caused by the tenant which went beyond reasonable wear and tear,

which caused the landlord to incur a loss. In reaching this conclusion, I was persuaded by the condition inspection report, the photos of the rental unit at the end of the tenancy and the receipts showing payment.

I therefore find that the landlord has established their monetary claim in the amount of \$626.00, which includes the filing fee of \$50.00.

### Conclusion

I allow the landlord to retain \$626.00 from the tenant's security deposit of \$705.00 in satisfaction of their monetary claim, and I grant the tenant a monetary order for the balance of his security deposit due him, in the amount of \$79.00.

I am enclosing the monetary order for \$79.00 with the tenant's Decision. This monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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 07, 2012.

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Residential Tenancy Branch