



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD and FF

### Introduction

This hearing was convened on the landlord's application of May 10, 2012 seeking authorization to retain a portion of the tenants' security deposit in set off against damage to the rental unit and recovery of the filing for this proceeding.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

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 tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. The burden of proof falls to the applicant.

### Background and Evidence

This tenancy began on November 1, 2011 and ended on April 30, 2012. Rent was \$970 per month and the landlord holds a security deposit of \$485 which, in compliance with section 38(1) of the *Act*, he has made application to claim against within 15 days of the end of the tenancy.

During the hearing, the landlord gave uncontested evidence that the tenants had caused a small indentation in a wall of the rental unit. The tenant stated she believed it may have been caused by a piece of furniture coming in contact with the wall and she had not been aware of it until conduct of the move-out condition inspection.

The tenant attempted a repair and used left over paint the landlord had provided, but as clearly shown in a photograph submitted by the landlord, the indentation remained visible and, while it is not clearly obvious in the photograph, the landlord stated that the paint shades did not match.

The landlord submitted a receipt and cancelled cheque showing that he had paid \$334.38 to a service provider who he stated had fully painted the rental unit in August of 2011.

### Analysis

Section 32 (3) of the Act provides that:

“A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

Section 32(4) relieves tenants of this duty with respect to normal wear and tear.

While I find the damage in this instance to be very minor, I find that the tenants did have a duty to restore the wall to its condition at the beginning of the tenancy.

However, I note that the supplier's invoice sets a minimum charge of \$299 plus tax for a total of \$334.88. I find this amount to be questionably high for the amount of work claimed and I believe that with some reasonable effort on the part of either the tenants or the landlord, they would have been able to find a competent painter to do the work at a substantially lower cost.

As neither has done so, I find that they should share equally in the repair cost and that they should equally share the filing fee for this proceeding.

Thus, I find that accounts balance as follows:

<b>Tenants' Credit</b>		
<b>Award to Landlord</b>		
Less one-half of \$334.88 paid to repair and repaint wall	\$167.44	
Less one-half of \$50 filing fee	<u>25.00</u>	
Subtotal to be retained by landlord	\$192.44	<u>- 192.44</u>
<b>Remainder of deposit to be returned to tenants</b>		<b>\$292.56</b>

### Conclusion

The landlord is authorized to retain \$192.44 of the tenants' security deposit and must return the balance.

To that end, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$292.56 for service on the landlord.

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: July 05, 2012.

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Residential Tenancy Branch