



# Dispute Resolution Services

Page: 1

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 and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

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 to retain the tenant's security deposit and to recover the filing fee?

### Background and Evidence

I heard undisputed testimony that this tenancy began on November 30, 2011, ended on April 30, 2012, monthly rent was \$550.00 and the tenant paid a security deposit of \$275.00.

The landlord agreed that there was not a move-in or move-out condition inspection report.

The landlord agreed that he received the tenant's written forwarding address on May 25, 2012 and has not returned any portion of the security deposit.

The landlord's monetary claim is \$125.00. The landlord's relevant evidence included what was referred to as a tenancy agreement, although I note that it was a short, 1 page document with several terms in contradiction of the Residential Tenancy Act.

Additionally the landlord submitted some utility bills, a written explanation of his claim and a letter which the landlord said the tenant signed agreeing to allow the landlord to retain \$150.00 from the tenant's security deposit.

*Landlord's oral evidence:*

The tenant did not pay all outstanding utility bills; therefore the tenant signed a document allowing the landlord to withhold \$150.00 for all bills owed.

The tenant did not clean the rental unit before he moved out; therefore the landlord is entitled to the remaining \$125.00.

*Tenant's oral evidence:*

The parties did not have a walk through inspection as claimed by the landlord and that all utilities were paid before the end of the tenancy. The tenant paid rent and utilities in full in cash throughout the tenancy and was not given a receipt by the landlord.

The tenant denied signing the letter agreeing to the landlord retaining \$150.00, and argued that his signature was forged.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I find the landlord submitted insufficient evidence that the tenant left the rental unit in a state which required cleaning.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

Due to the landlord's insufficient evidence, I therefore dismiss his claim for \$125.00. As I have dismissed the landlord's monetary claim, I also dismiss his request to recover the filing fee of \$50.00.

As to the issue of the security deposit, the landlord argued that the tenant agreed in writing to allow him to keep \$150.00. I therefore examined the document presented and I accept that the tenant did not sign this document. In reaching the conclusion, I examined the document referred to as the tenancy agreement, which contained the tenant's name printed and a quite distinguishable signature above the printed name.

On the document presented by the landlord, the tenant's name was again printed, which appeared to be printed by the same person as on the tenancy agreement, with no signature above that name.

As I have found that the tenant did not sign his agreement, I find the landlord had no right to retain any portion of the tenant's security deposit.

Under the Act, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's

forwarding address in writing. The landlord received the tenant's forwarding address on May 25, 2012, but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenant's security deposit within 15 days of having received the tenant's written forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of the deposit.

### Conclusion

As I have found that the landlord must pay the tenant double the base amount of his security deposit of \$275.00, I therefore grant the tenant a final, legally binding monetary order in the amount of **\$550.00**, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the 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: August 20, 2012.

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Residential Tenancy Branch