



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 12, 2012. The landlord supplied the tracking number and the registered mail receipt, and testified that the documents were sent to the forwarding address the tenant gave on the condition inspection report.

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

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, to a monetary order and to recover the filing fee?

### Background and Evidence

This tenancy began the first of May 2011, ended on June 30, 2012, monthly rent was \$1500.00 and the tenant paid a security deposit of \$750.00 at the beginning of the tenancy.

The landlord's monetary claim is \$1600.00 for alleged damage beyond reasonable wear and tear. The landlord's relevant evidence included photos of the rental unit, the condition inspection report and a receipt for the repair and cleaning for the rental unit. The landlord supplied a registered mail receipt showing attempted delivery of his evidence to the tenant. I note the receipt for work performed was in the amount of \$1584.80, which includes the following:

drywall repair	\$115.00
miscellaneous repair	\$100.00
painting	\$500.00
paint	\$100.00
general cleaning	\$100.00
<b>Total</b>	<b>\$1315.00</b>

The landlord did not provide an explanation of the difference in this amount and the receipt amount.

The landlord said that he had the building contractor attend the rental unit to give a report as to the damage and state of the rental unit at the end of the tenancy. The contractor later performed the work, which included repair to the drywall due to an unreasonable amount of thumbtacks and tape used by the tenant, which required repainting as well. Further work was to replace the damaged hardwood flooring, as the current flooring could not be matched for spot repairs and repair the cigarette burns in the patio floor.

The rental unit required cleaning and a knob on the stove and in the shower had to be replaced.

When questioned the landlord stated that the rental unit was a year old at the time the tenancy began, making all items 2 years old.

### Analysis

Based on the relevant oral and written 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, the landlord in this case, has to prove, with a balance of probabilities, 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 reasonable measures to mitigate their loss.

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

I find the landlord provided sufficient, undisputed evidence of the unclean state of and damage to 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.

As to the amount to which the landlord is entitled, RTB Guidelines 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The landlord confirmed that the rental unit was **2 years old** at the end of the tenancy and I therefore must find that the flooring, painting and wall repair are to be depreciated by **2 years**.

**Hardwood flooring**-Hardwood flooring has a useful life of 20 years and has therefore been depreciated by 10%. I therefore find the landlord has proven a monetary claim for flooring damage in the amount of \$360.00 (\$400.00- 10%).

**Drywall repair**-Drywall has a useful life of 20 years and has therefore been depreciated by 10%. I therefore find the landlord has proven a monetary claim for drywall repair in the amount of \$103.50 (\$115.00 – 10%).

**Paint**-Interior paint has a useful life of 4 years and has therefore been depreciated by 50%. I therefore find the landlord has proven a monetary claim for painting in the amount of \$250.00 (\$500.00-50%).

I find the landlord is entitled to the full amount claimed for a miscellaneous repair of \$100.00, paint for \$150.00 and general cleaning for \$100.00.

I also find the landlord is entitled to recovery of the filing fee of \$50.00.

Conclusion

I find the landlord has established a monetary claim of **\$1113.50**, comprised of the depreciated value of hardwood flooring for \$360.00, the depreciated value of drywall repair for \$103.50, the depreciated value of interior paint for \$250.00, miscellaneous repair for \$100.00, paint for \$150.00, general cleaning of \$100.00 and the filing fee of \$50.00.

I have not allowed for the difference in the receipt amount of \$1584.80 and the total for individual amounts listed on the receipt, due to the lack of explanation.

I allow the landlord to retain the tenant's security deposit of **\$750.00** in partial satisfaction of his monetary claim and I grant the landlord a final, legally binding monetary order for the balance due in the amount of **\$363.50**, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: September 21, 2012.

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Residential Tenancy Branch