



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the Hearing and gave affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord testified that he mailed the Notice of Hearing documents to the Tenant, by registered mail, on August 16, 2012. A copy of the receipt and tracking number was provided in evidence. The Landlord also testified that he provided the Tenant copies of his documentary evidence by registered mail.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for the cost of cleaning the patio deck and dishwasher at the end of the tenancy?
- Is the Landlord entitled to a monetary award for the cost of replacing the doors on the stainless steel refrigerator?
- May the Landlords deduct their monetary award from the security deposit?

### **Background and Evidence**

In this Decision, I have referred only to the relevant evidence with respect to the Landlord's Application.

The Tenant testified that the tenancy began on March 22, 2010. The Landlord testified that it began on March 20, 2010. The parties agreed that the tenancy ended on July 31, 2012.

The parties agreed on the following facts:

- Rent was \$1,330.00, due on the first day of each month, and the Tenant paid a security deposit in the amount of \$1,300.00.
- The Tenant advised the Landlord that he was not entitled to more than 50% of a month's rent for a security deposit, so the Tenant deducted the overpayment of \$650.00 from the first month's rent.
- The Landlord is still holding the security deposit of \$650.00.

The Landlord testified that there was a move-in condition inspection at the beginning of the tenancy, but not at the end. The Tenant stated that there was a "walk through" at the beginning of the tenancy, but no formal Condition Inspection Report was completed. The Landlord stated that he did not complete a formal Report because the rental unit was brand new and the Tenant was the first tenant.

The Landlord stated that the rental property was a "5 star luxury apartment building". He stated that he had two expectations: that there would be no excessive wear and tear to the rental unit at the end of the tenancy; and that the Tenant would return the rental unit "clean and in immaculate condition".

The Landlord stated that the Tenant dented and scratched the stainless steel refrigerator and did not clean the dishwasher or the patio deck at the end of the tenancy. The Landlord provided photographs of the refrigerator, dishwasher and patio in evidence along with a copy of the estimate for the cost of replacing the refrigerator doors.

The Tenant stated that the Landlord left no instructions for the cleaning of the refrigerator. He said that, although he accepted that he was the first occupant of the rental unit, there were tradesmen and others who accessed the rental unit before he moved in and that the scratches on the refrigerator might have been caused by others or by him. The Tenant submitted that the scratches on the fridge could be buffed out and that they were normal wear and tear. The Tenant stated that he paid for a professional cleaner to clean the rental unit at the end of the tenancy. He apologized for not cleaning the inside of the dishwasher and stated that it was an oversight.

### **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the Act requires the Tenant to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear. There is no higher standard for high-end or luxury accommodation.

Based on the testimony and photographs provided, I am satisfied that the Tenant did not leave the dishwasher or the deck in reasonably clean condition at the end of the tenancy. The Landlord did not provide an invoice for the cost of power washing the deck or cleaning the dishwasher. However, Residential Tenancy Policy Guideline 16 provides that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where a party has not proven the amount required to compensation for a loss, but the party has proven that there has been an infraction of a legal right. I find that the Landlord is entitled to the nominal amount of **\$50.00** for this portion of his claim.

I am satisfied that the Landlord is entitled to compensation for the damage to the refrigerator but not in the amount the Landlord claims, for the following reasons:

1. I find that the Landlord must bear half of the cost of the damage to the refrigerator doors because he did not mitigate his loss by providing instructions to the Tenant with respect to cleaning the refrigerator. However, based on the photographs provided, it appears that the Tenant used steel wool, or other abrasive substance to clean the refrigerator and I find that a reasonable person would not use abrasives to clean stainless steel.
2. The refrigerator was approximately two years old at the end of the tenancy and therefore some depreciation must be taken into account when calculating the Landlord's loss. Residential Tenancy Guideline 40 sets the useful life of a refrigerator at 15 years.

I find that the Landlord is entitled to a monetary award in the amount of \$419.39 for this portion of his claim, calculated as follows:

Estimate provided	\$958.59
Less 1/8 depreciation ( $\$958.59 \times 1/8$ )	<u>-\$119.82</u>

Subtotal	\$838.77
Less ½ of cost of damages	<u>-\$419.38</u>
TOTAL	<b>\$419.39</b>

The Landlord has been successful in its application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord has established a total monetary award, calculated as follows:

Damage to the refrigerator	\$419.39
Cleaning the dishwasher and deck	\$50.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL AWARD	<b>\$519.39</b>

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply a portion of the security deposit in full satisfaction of the Landlord's monetary claim. I order the Landlord to return the balance of the security deposit to the Tenant forthwith and have provided the Tenant a Monetary Order against the Landlord in the amount of **\$130.61** (\$640.00 - \$519.39).

### **Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of **\$130.61**, representing the balance of the security deposit after deducting the Landlord's monetary award. After service of this Order upon the Landlord, the Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 26, 2012.

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Residential Tenancy Branch