



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF  
                             MNSD FF

### Preliminary Issues

At the outset of the hearing the Landlord acknowledged receipt of the Tenant's application and noted that she did not receive evidence from the Tenant. The Tenant confirmed that he did not submit evidence in support of his claim.

The Tenant denied receipt of the Landlord's application and evidence. The Landlord confirmed the hearing documents and all evidence, except for photos were sent to the Tenant by registered mail on October 19, 2012, as supported by the Canada Post receipts she provided in evidence. She noted that the photos were sent at a later date. The Tenant advised that the service address listed on his application was his accountant's office and he has had no problem receiving information from them in the past. The Landlord confirmed that the registered mail packages have not been returned to her and Canada Post tracking information indicated that the initial package was signed for.

I informed the Tenant that we could adjourn today's hearing to a future date to allow him time to obtain the Landlord's application and evidence and prepare his response or we could proceed with the hearing which was scheduled for today. The Tenant stated that he had all the documents that the Landlord would have submitted as evidence and began to list the documents which included: e-mails, the tenancy agreement, and condition inspection reports. The Tenant advised that he wished to proceed with today's hearing in order to move forward. At that point I asked the Tenant how he knew what was submitted in the Landlord's evidence when she had only mentioned the photos she sent later. He argued that he assumed these were the documents she would have submitted as they were pertinent to the tenancy and her claim. The Tenant confirmed he wished to proceed with the hearing today.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenant be granted a Monetary Order?

#### Background and Evidence

The Landlord submitted evidence which included, among other things, copies of: photos, Canada Post receipts, her written statement, the cleaner's written statement, a witness statement, the tenancy agreement, and move in and move out condition inspection reports.

The parties agreed they entered into a fixed term tenancy agreement which began on October 13, 2011 and switched to a month to month tenancy after March 1, 2012. The Tenant vacated the property upon mutual agreement on March 13, 2012. Rent was payable on the 13<sup>th</sup> of each month in the amount of \$1,895.00 and on October 12, 2011 the Tenant paid \$947.50 as the security deposit. The parties completed and signed a move in condition inspection report form on October 11, 2011.

The Landlord affirmed that she attended the rental unit with her witness, the cleaning person, on March 13, 2011 to conduct the move out inspection. She stated the Tenant was in a hurry to leave before the end of the inspection because he said he had another engagement to attend. He left to get his car out of the parking garage and requested that the Landlord meet him outside so he could return the keys and garage fob. The Landlord advised the Tenant she would complete the inspection and e-mail him a copy the next day. She said she was surprised to see the Tenant smoking when she met him to get the keys because he had told her he did not smoke.

The Tenant stated that he thought everything was okay with the inspection and that it was completed by the time he left. He argued that the Landlord did not have the form for him to complete and sign and that she failed to give him a copy of it. He stated that he thought there were no problems because they shook hands and he left.

The Landlord argued that she had the move out inspection form with her during the move out inspection but it was not completed by the time the Tenant left because he was insistent on leaving early. She confirmed that the move out inspection form was e-mailed to the Tenant, as agreed, on March 19, 2012. She acknowledged receiving the Tenant's forward address on March 24, 2012 and again on May 23, 2012.

The Landlord submitted evidence that the rental unit and some of the furnishings were damaged during the tenancy. The unit was to be a non-smoking unit and it was evident by the damage that the Tenant smoked inside the unit. She is seeking compensation as follows:

- \$1,840.00 to repair / replace the marble tile located in the sun room which appears to have stains near where the plants are located
- \$693.00 for items repaired/replaced including dishes, sheets, bedding, duvet, supplies and cleaning products, bath mat, door frame and steam cleaning of carpet and blinds.

The Landlord advised that she was not previously aware of the claim process and noted that she had previously deducted the \$693.00 from the security deposit and sent the Tenant a cheque on September 1, 2012 in the amount of \$254.50. She noted that the unit was a non smoking unit and the evidence shows the Tenant was smoking inside the rental unit as burn marks were on the sheets and duvet.

The Tenant confirmed receipt of the \$254.50 cheque and advised that he has not yet cashed this cheque. He denies responsibility for damaging the marble tile. He argued that the stains were from the plants that were part of the furnishings left by the Landlord, which he was instructed to water, and he questions if the marble was sealed to prevent staining. He acknowledges that he broke possibly 3 plates and a couple glasses during the tenancy but they were inexpensive and argued that damage was normal wear and tear. He confirmed that the door frame broke but it was pencil thin and again was normal wear and tear.

As for the rest of the damage he believes he was not provided time to contest the Landlord's claims for damages because she had another tenant move in right after him and this new tenant could have caused the damage. He confirmed that he used to smoke on the balcony and noted that the people above and directly below his unit also smoked on their balcony which could have caused the smoke smell or damage inside the unit.

In closing the Landlord noted that the Tenant was selected because he said he was a non smoker and the unit was a non smoking unit. She noted that he just admitted to smoking on the balcony and the evidence shows burn marks on the linens.

During the course of the hearing I Ordered the Tenant not to cash the \$254.50 cheque and I advised the Landlord she was at liberty to put a stop payment on the cheque.

### Analysis

In making my determinations I favored the evidence of the Landlord over the Tenant's testimony, in part, because the Landlord's evidence was forthright and credible and was supported by a witness statement of the cleaning person who was also in attendance at the scheduled move out. I favored the evidence of the Landlord, who stated the Tenant left the move out inspection early, prior to its completion and that she told him she would send him a copy at a future date, which she did. The Landlord readily acknowledged that the stains on the marble tile may have been caused by the plants she instructed the Tenant to water. Therefore, in my view the Landlord's willingness to admit the plant watering may have caused the damage to the tiles when she could have stated it was something else done by the Tenant lends credibility to all of the Landlord's evidence.

The Tenant provided contradictory testimony alleging that he did not receive the Landlord's evidence, even though his accountant sends him everything yet the evidence proves the documents were signed for at the service address. Then the Tenant wanted to proceed with the hearing because he said he had the documents that would have been submitted as evidence and he listed the documents he had; however there was no mention of what documents were submitted into evidence by the Landlord. The Tenant acknowledges smoking on the balcony, after entering into a non-smoking tenancy, and denies causing damage to the unit when the evidence clearly shows cigarette burns. In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Based on the aforementioned, I find the Landlord's explanation that the Tenant damaged the unit and furnishings and that he left the move out inspection before its completion to be plausible, given the circumstances presented to me during the hearing.

I have carefully considered the aforementioned and documentary evidence and on a balance of probabilities I find the following:

- the tenancy ended March 13, 2012; and
- the Landlord finished the inspection and completed the report in the Tenant's absence; and
- the Landlord provided the Tenant with a copy of the move out inspection March 19, 2012 which listed the damages; and
- the Tenant first provided the Landlord with his forwarding address on March 24, 2012.

The *Act* stipulates that the right of a tenant to the return of a security deposit is extinguished if the landlord complied with scheduling a move out inspection and the tenant does not fully participate. Based on the foregoing I find the Tenant extinguished his right to the return of the deposit when he left the inspection prior to its completion. Therefore, the Tenant is not entitled to make claim for the return of double his deposit. Accordingly, I dismiss the Tenant's claim.

The Landlord has filed for monetary compensation for damages to the unit. I accept the evidence that damage was caused to the rental unit and furnishings during the tenancy and I award the Landlord \$947.50, the amount of the security deposit, as full compensation for the damages and filing fees incurred by the Landlord.

#### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord is HEREBY ORDERED to retain the security deposit in the amount of \$947.50.

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 21, 2012.

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Residential Tenancy Branch