



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the landlords' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords applied for authorization to keep all or part of the security deposit, and to recover the filing fee.

The female tenant and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Both parties stated that they received the evidence packages from the other party prior to the hearing and had the opportunity to review the evidence. I find the parties were served in accordance with the *Act*.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that based on the details of the claim, the landlords claim appeared to include a claim for damages, in addition to authority to retain the security deposit. As a result and based on the details submitted in the landlords' application I amend the landlords' application to include a claim for a monetary order for damages to the unit, site or property. This amendment does not prejudice the respondent tenants as the details of the dispute clearly articulate that the applicant landlords are seeking compensation for damages.

At the outset of the hearing, both parties were asked whether they had any other persons with them at the hearing or any witnesses during the hearing. Both parties did not indicate that any other persons or witnesses would be participating in the hearing. At the end of the hearing, the tenant stated that her witness was no longer available as the hearing went longer than her witness was available for. I advised the tenant that she was asked at the start of the hearing about witnesses and she did not recall being asked. The landlords were asked if they were asked about witnesses and they

confirmed they were asked at the start of the hearing. As a result, the hearing concluded after 84 minutes without any witnesses being called by either party.

### Issue to be Decided

- Are the landlords entitled to retain all or part of the security deposit under the *Act*?

### Background and Evidence

A fixed term tenancy began on August 1, 2011, and reverted to a periodic tenancy as of July 31, 2012. The tenancy ended on August 31, 2012, when the tenants vacated the rental unit. Monthly rent in the amount of \$1,400.00 was due on the first day of each month. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy.

The tenant stated during the hearing that she is seeking double the security deposit if she is entitled to it. The landlords confirmed receiving the forwarding address of the tenants on August 31, 2012 in writing, and is indicated on the move-out condition inspection report.

The landlords' monetary claim is for \$274.20 which using the amounts provided in the landlords' application actually total \$259.10 and is comprised of the following:

Bathroom sink	\$133.28
Bathroom door	\$25.87
Bathroom toilet paper holder	\$9.99
Bathroom light bulb	\$6.98
Smoke Detector	\$22.98
Labour and supplies for cleaning and painting (calculated at 1 hour of cleaning at \$20.00, 1 hour of prepping sink for plumber at \$20.00 and 1 hour to mud the walls/sand/re-painting at \$20.00)	\$60.00
<b>TOTAL</b>	<b>\$259.10</b>

The landlords indicate in their documentary evidence that the bathroom door, toilet paper holder, bathroom light bulb and smoke detector are "+ tax" and that the tax amount is included in the \$274.20 total, however, I find that the total does not add up

correctly as submitted by the landlords. As a result, I will base the landlords monetary claim on the before tax amounts for a total claim of \$259.10 as described in the table above.

At the start of the hearing, the tenant agreed to the landlords' claim of \$6.98 for the bathroom light bulb. The tenant disputed the remainder of the landlords' claim.

The tenant testified that they were not asked by the landlords to participate in a move-in condition inspection. The landlords confirmed that a move-in condition inspection was not completed. On the condition inspection report submitted in evidence by the landlords, the move-in portion of the condition inspection report indicates "N/A" due to the suite being newly renovated. The tenant disputed the landlords' testimony.

The tenant stated that she could not recall if there was a flaw in the sink at the start of the tenancy. The tenant testified that the bathroom sink was not brand new at the start of the tenancy. The tenant described that a hairline crack began appearing in the sink shortly after the start of the tenancy and progressively became worse by July or August of 2012, before the tenancy ended. The tenant denied dropping anything in the sink that would damage the sink, and denied that any guest had damaged the sink during her tenancy. The tenant testified that she did not advise the landlords of the flaw in the sink during the tenancy so that it could be addressed. The landlord submitted a receipt for \$133.28 from a plumbing company. There is a model number on the receipt, however, the receipt does not indicate that the receipt is specifically for a sink on the receipt.

The landlords claimed that the smoke detector was smashed by the tenant. The tenant disputed the testimony of the landlords. The tenant stated that she removed the smoke detector and placed it on the counter but did not smash it.

The tenant did confirm that the toilet paper holder did break during the tenancy. The tenant stated the toilet paper holder broke as a result of "normal wear and tear" as the toilet paper holder was "flimsy". The landlords disputed that the toilet paper holder was flimsy, as their identical holder had lasted for years and had not broken. The landlords did not submit an invoice or quote for the toilet paper holder to corroborate the value of the toilet paper holder.

The landlords have claimed \$60.00 for cleaning and re-painting of the rental unit. The landlords testified that they are not claiming for the cost of paint, as they had leftover paint from when the rental unit was painted at the start of the tenancy. The amount of \$60.00 is comprised of 1 hour of cleaning at \$20.00, 1 hour of prepping the damaged sink for the plumber at \$20.00, and 1 hour to mud the walls, sand and re-paint the walls

at \$20.00. The tenant disputed the landlords' testimony. The tenant claims that the two cracks in the bathroom door as shown in the landlords photos and the scrapes on the walls show "normal wear and tear". The tenant testified that she did not ask the landlords for paint prior to the end of tenancy to repair and repaint the walls. The tenant testified that the cracks in the door occurred when she opened the door and there was something blocking the door. The landlords testified that they have not replaced the door to date. The landlords did not submit an invoice or quote for the door to corroborate the value of the door.

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.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for bathroom light bulb** – During the hearing, the tenant agreed the landlord's claim for \$6.98 for the bathroom light bulb. As a result, I find that based on the mutual agreement of the parties, the tenant agrees that she owes the landlords **\$6.98** for the cost of the bathroom light bulb.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the

landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Claim for bathroom door** – The landlords have claimed \$25.87 for a broken bathroom door which the landlords claim the tenants broke during the tenancy. The tenant acknowledged during the hearing that the door was damaged during the tenancy, however, the tenant claims that the two cracks in the door were a result of “normal wear and tear”. I reject the tenant’s claim that two holes in a bathroom door are a result of normal wear and tear. Although the landlords did not submit supporting evidence of the value of the bathroom door, in my experience, the amount being claimed of \$25.87 is nominal and reasonable. Therefore, **I find** that the landlords are entitled to **\$25.87** in compensation for the damaged bathroom door.

**Claim for smoke detector** – The landlords have claimed \$22.98 for a smoke detector which they claim the tenants broke during the tenancy. The tenant disputed the landlords’ testimony and denied damaging the smoke detector. The tenant testified that she removed the smoke detector from the wall which is supported by the photo evidence, but denies smashing or damaging the smoke detector. **I find** that the landlords have failed to meet the burden of proof by failing to prove that the tenant broke the smoke detector and did not provide additional evidence to support the landlords’ claim. **I find** that the landlords also failed to prove the value being claimed for the smoke detector. Therefore, **I dismiss** this portion of the landlords’ claim due to insufficient evidence, without leave to reapply.

**Claim for toilet paper holder** – The landlords have claimed \$9.99 to replace a broken toilet paper holder. The tenant admitted during the hearing that the toilet paper holder was broken during the tenancy, but claims the toilet paper holder was “flimsy” and broke from “normal wear and tear”. Based on the photo evidence, I do not accept the tenant’s testimony that the toilet paper broke from normal wear and tear given how lightweight a roll of toilet paper is, and that normal use would involve rolling paper from the holder which is not likely to break the holder without a significant force being applied. Although the landlords did not submit supporting evidence of the value of the toilet paper holder, in my experience, the amount being claimed of \$9.99 is nominal and reasonable. Therefore, **I find** that the landlords are entitled to **\$9.99** in compensation for the damaged toilet paper holder.

**Claim for bathroom sink** – The landlords have claimed \$133.28 for the cost to replace a damaged bathroom sink. The landlords testified that the sink was new at the start of the tenancy, however, failed to prove that the sink was new through the submission of supporting evidence. A receipt from a plumbing company was submitted as evidence to support the value of the sink, however, the receipt did not mention “sink” on the receipt and only listed a model number.

Even if I were to accept the receipt as submitted by the landlords regarding the value of the sink, the tenants testified that the sink formed a hair line crack through no fault of their own, and deny dropping anything into the sink or damaging the sink through their own actions. Based on the disputed testimony of the parties, and the lack of close up photos of the sink before the tenancy began, and given that a move-in condition inspection was not completed to prove the condition of the sink at the start of the tenancy, **I find** the landlords have failed to meet the burden of proof by failing to prove that the tenants damaged the sink and that the sink was new at the start of the tenancy. Therefore, **I dismiss** this portion of the landlords’ claim due to insufficient evidence, without leave to reapply.

**Claim for labour and supplies for cleaning and painting** – The landlords have claimed \$60.00 for cleaning and re-painting of the rental unit. The landlords testified that they are not claiming for the cost of paint, as they had leftover paint from when the rental unit was painted at the start of the tenancy. The amount of \$60.00 is comprised of 1 hour of cleaning at \$20.00, 1 hour of prepping the damaged sink for the plumber at \$20.00, and 1 hour to mud the walls, sand and re-paint the walls at \$20.00. The tenant disputed the landlords’ testimony. The tenant claims that the two cracks in the bathroom door as shown in the landlords photos and the scrapes on the walls are “normal wear and tear”. The tenant testified that she did not ask the landlords for paint prior to the end of tenancy to repair and repaint the walls but would have repaired the walls if the landlord provided paint.

I do not accept the tenant’s testimony that the damage on the walls was “normal wear and tear”. **I find** the photos submitted as evidence represent damage that required repair after the tenancy ended. One photo of a wall shows several scrapes in the paint and damage to the corner bead of the wall. **I find** that the landlords claim of \$20.00 for cleaning and \$20.00 for mudding, sanding and re-painting is nominal and reasonable, and is supported by the photo evidence. Therefore, **I find** that the landlords are entitled to **\$40.00** in compensation. **I dismiss** the remaining \$20.00 portion of the \$60.00 claim for this portion of the landlords’ claim as I have already dismissed the claim for the

bathroom sink due to insufficient evidence above, and the remaining \$20.00 portion relates to costs for prepping the bathroom sink for the plumber.

**Return of the tenant's security deposit** - The parties agree that a move-in condition inspection report was not completed by the landlords at the start of the tenancy. Section 23 of the *Act* states:

**23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.**

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

**(4) The landlord must complete a condition inspection report in accordance with the regulations.**

**(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

The consequences for landlords who fails to comply with a move-in condition inspection report are found in section 24 of the *Act* and state:

**24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

**(a) does not comply with section 23 (3) [2 opportunities for inspection],**

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) **does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

[emphasis added]

During the hearing, the tenant stated that she is seeking the return of double her security deposit if she is entitled to it. Policy Guideline #17 states that the Arbitrator will order the return of double the deposit if the landlords have claimed against the deposit for damage to the rental unit and the landlords' right to make such a claim has been extinguished under the *Act*.

In the matter before me, the landlord's have not claimed for unpaid rent. The landlords have claimed for damage and to keep all or a portion of the security deposit. **I find** that landlords breached section 23 of the *Act* by failing to complete a move-in condition inspection report and have that report signed by the tenant at the start of the tenancy. Therefore, **I find** the landlords extinguished their rights to claim towards the security deposit at the start of the tenancy.

Section 38 of the *Act* applies which states:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

**(6) If a landlord does not comply with subsection (1), the landlord**



(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

Given the above, **I find** the landlords breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on August 31, 2012, and made a claim towards the security deposit despite having extinguished their rights by breaching section 23 of the *Act*. Therefore, **I find** the tenant is entitled to the return of double the original security deposit of \$700.00 for a total of **\$1,400.00**.

The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant. In the matter before me, the landlords did not have any authority under the *Act* to keep any portion of the security deposit due to the breach of section 23 of the *Act*.

As the landlords were successful with a portion of their claim, **I grant** the landlords the recovery of half of their filing fee in the amount of **\$25.00**.

The tenant's security deposit of \$700.00 which doubles to \$1,400.00 pursuant to section 38(6) of the *Act* has accrued no interest since the start of the tenancy.

The landlords have established a total monetary of **\$107.84** comprised as follows:

Bathroom door	\$25.87
Bathroom toilet paper holder	\$9.99
Bathroom light bulb	\$6.98
Labour and supplies for cleaning and painting (calculated at 1 hour of cleaning at \$20.00 and 1 hour to mud the walls/sand/re-painting at \$20.00)	\$40.00
Half of filing fee	\$25.00
<b>TOTAL</b>	<b>\$107.84</b>

**Monetary Order** – I find that the tenant is entitled to the return of \$1,400.00, less \$107.84, which is the full monetary claim established by the landlords. Therefore, **I**

**grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,292.16**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlords have established a total monetary claim of \$107.84.

I find the tenant is entitled to the return of double her security deposit for a total amount of \$1,400.00 less \$107.84. I grant the tenant a monetary order under section 67 for the balance due of \$1,292.16. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 11, 2012

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Residential Tenancy Branch