



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, FF

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of the deposit, compensation in the sum of \$500.69 and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting compensation in the sum of \$1,035.00 for painting the rental unit and to recover the filing fee costs from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided; receipt of which was confirmed by the parties.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to compensation for the cost of painting the rental unit in the sum of \$500.69?

Is the landlord entitled to compensation in the sum equivalent to that claimed by the tenant, for the landlord's cost to paint the rental unit?

Is either party entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on September 13, 2011; a copy of the signed tenancy agreement was supplied as evidence. A deposit in the sum of \$500.00 was paid.

The tenant gave proper notice and vacated the rental unit on August 31, 2012, at which time a move-out condition inspection report was completed on the same form used at the start of the tenancy for the move-in condition inspection report.

The parties agreed in writing, on the inspection report, that the landlord could retain \$99.68 for carpet cleaning and \$65.00 for window cleaning. The tenant was to receive \$335.32 to the written forwarding address he gave to the landlord on the inspection report.

The landlord discovered additional damage to the unit and returned \$140.00 to the tenant, not the amount they had agreed. The tenant has yet to cash that cheque.

The landlord did not submit a claim in relation to the items he said were in need of repair that had resulted in the additional deduction made from the deposit.

The tenant claimed the cost of painting the rental unit; he agreed to do so rather than have the landlord paint.

The landlord said that the tenant did not fully complete the painting and they had to do touch-ups.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

A tenant may provide written permission, at the end of a tenancy, allowing the landlord to retain a specific amount from the deposit. This is based on section 38(4) of the Act which provides:

- 4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant*

There was agreement to deductions and when the landlord discovered additional damage the landlord was at liberty to submit an application claiming against the deposit, within 15 days of August 31, 2012; the date the tenancy ended and the written forwarding address was given to the landlord. The landlord applied on October 15, 2012 and did not set out a claim for any damage to the unit; only a monetary amount was provided.

As the landlord arbitrarily retained an amount from the deposit, beyond that agreed to in writing by the tenant, I find that the landlord breached the Act and that the tenant is entitled to return of double the deposit, as provided by section 38(6) of the Act.

Therefore, I find that the tenant is entitled to double the \$500.00 deposit paid, less \$140.00 previously returned, less \$164.68 for the agreed-upon damage costs; for a balance of \$695.32.

In relation to the claim for painting costs incurred by the tenant; I find that the agreement to paint was independent of the tenancy. If the tenant agreed to complete work for the landlord he was at liberty to do so, but that work is not within the jurisdiction of the Act.

The landlord supplied no evidence in support of a claim for \$1,035.00 in painting costs; therefore I find that the claim is dismissed.

As the tenant's application has merit I find that he is entitled to recover the \$50.00 filing fee cost.

As the landlord's claim is dismissed, I decline filing fee costs to the landlord.

Based on these determinations I grant the tenant a monetary Order for \$745.32. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,050.00, less the amount repaid to the tenant and the amount of deduction agreed to by the tenant at the end of the tenancy.

Jurisdiction is declined in relation to the tenant's claim for painting costs.

The landlord's claim is dismissed.

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: December 04, 2012.

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Residential Tenancy Branch