



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent; damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$325.00 for damage to the rental unit?

Is the landlord entitled to loss of rental income for September 2012, in the sum of \$750.00?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed that the tenancy commenced on August 1, 2011; rent was \$750.00 due on the 1<sup>st</sup> day of each month. A deposit in the sum of \$375.00 was paid. A copy of the tenancy agreement and the move-in condition inspection report were supplied as evidence.

The move-in condition inspection report indicated a number of minor deficiencies with the unit.

The landlord has made the following claim:

<b>Damages</b>	
Repair holes to walls	\$150.00
Purchase and install bathroom lock set	70.00
Repair fireplace trim	35.00
Cleaning landlord time	50.00
Removal of garbage – 3 bags	12.00
Photographs	8.00
<b>TOTAL</b>	<b>\$325.00</b>

The landlord also claimed loss of September, 2012 rent revenue in the sum of \$750.00.

The parties agreed that the tenant gave verbal notice at the end of July, effective August 31, 2012. The landlord accepted this notice and began to advertise the unit on several web sites.

The tenant vacated on either September 4 or 5, 2012. The tenant said the landlord had given him extra time, as a new occupant had not been identified. The landlord said that the tenant over-held, without her permission. The landlord said she had a new occupant who was to take possession of the unit on September 1, 2012; no deposit was paid and a tenancy agreement was not signed.

The landlord confirmed that the tenant was not given at least 2 opportunities to complete a move-out condition inspection report. The landlord had expected to meet with the tenant on the last day of August, to complete the inspection, but the tenant had not yet moved out. The landlord said that on the night of September 5, 2012 the tenant came up to her unit and asked her to view the unit; the landlord said the tenant was asked to return the next day, as it was now 10 p.m. The tenant said that the landlord said she was too tired to view the unit and that she did not offer him another time or date to meet.

The tenant said he made 3 telephone calls to the landlord during September trying to arrange an inspection and return of the security deposit.

On September 30, 2012 the tenant mailed the landlord a letter which responded to claims the landlord had made for damage; the letter included the tenant's forwarding address and was sent by regular Canada Post on that date. A copy of the letter was supplied as evidence. The landlord stated she did not receive the letter until October 17, 2012. On October 19, 2012 the landlord applied claiming against the deposit.

The landlord returned \$50.00 to the tenant; he has cashed that cheque. The landlord had deducted \$325.00 from the deposit as compensation the landlord felt she was due,

as the result of damage to the unit. When the \$50.00 was sent to the tenant he was provided a list of deductions made from the deposit.

The landlord supplied a number of photographs, some of which the tenant said he could not locate in his evidence package. The photographs showed some dirty window sills, dirty baseboards and holes in the living room walls, a cracked wood trim and other damage which has not been claimed, such scratches on floors.

The landlord supplied a copy of an invoice issued on September 29, 2012 in the sum of \$285.60 for the cost of repairing the fireplace trim, the wall and the new bathroom lock set. A September 17, 2012 invoice for 3 bags of garbage in the sum of \$12.00 was also supplied.

The tenant did not dispute that he had installed a flat screen TV to the living room wall and that he moved the unit, which resulted in additional holes being made in the wall. A photograph of a hole along the baseboard, which had clear tape placed over it, was supplied as evidence. The tenant said that photograph was not in his evidence package and that he did not recall a hole made in the wall.

The landlord said that the bathroom lock set was missing and had to be replaced. The tenant testified that the lock set had broken; he had used the door knob and it fell apart; he had informed the landlord. The tenant removed the lock set from a living room door and installed it on the bathroom door.

The condition inspection report did not include any reference to the wood trim around the fireplace. The landlord said the home was built in 1977 and she was not sure if the trim was original or not. A photograph showed that the wood trim had cracked. The landlord said it had cracks in 3 locations. The tenant said the trim had a small 2 to 3 inch crack when he moved in; this was not recorded on the inspection report.

The tenant's mother said she was in the home for approximately 2.5 hours on the night of September 4, 2012, to assist with cleaning. She said that they walked through the unit when they were finished and that it was in good shape. Some items, such as the stove, were cleaner than at the start of the tenancy. The tenant stated that the unit was left in a clean state and that the landlord refused to come to the unit on the night of September 4, to inspect.

The tenant questioned the landlord's pictures; he believed they were taken in mid-October; the landlord said that was when she developed her pictures.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

First I will deal with the security deposit and the absence of a move-out condition inspection report. The landlord confirmed that she knew the tenant was to vacate at the end of August 2012, yet a move-out inspection was not arranged by the landlord.

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

I find that the landlord failed to offer the tenant at least 2 opportunities to complete a move-out inspection; this is based on the testimony of both parties, which confirmed that an inspection was not scheduled. The landlord expected the tenant to meet with her on August 1, but had not set a date and time for the inspection.

When the landlord's right to claim against the deposit is extinguished the landlord must return the deposit to the tenant within 15 days of receipt of the tenant's written forwarding address. I find that the landlord received the tenant's forwarding address on either September 5, 2012, the 5<sup>th</sup> day after the tenant mailed his letter to the landlord; or on October 17, 2012, the day the landlord submitted she received the letter; the landlord then had 15 days to return the deposit to the tenant. The landlord was free to make a claim for damage to rental unit, but in the absence of written agreement by the tenant, she could not make any deductions from the deposit and was required to return the deposit, in full.

Section 38(1) of the Act provides:

**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.*

Section 38(6) of the Act provides:

**(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)

As the landlord's right to claim against the deposit was extinguished, she could not claim against the deposit. Therefore, as the deposit was not returned to the tenant, in full, within 15 days of October 17, 2012, I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the \$375.00 deposit; less the \$50.00 previously returned.

I have then considered the landlord's claim for compensation in relation to a loss of September, 2012 rent revenue. In the absence of any evidence that the landlord had located a new occupant, such as proof of payment of a deposit or a signed tenancy agreement, I find that the landlord has failed to prove, on the balance of probabilities, that a new occupant had been ready to take possession of the unit on September 1, 2012. Further, I find that any repair or cleaning that the landlord had to make was not sufficient to thwart a new occupant from taking possession of the unit. Therefore, I find that the claim for loss of September, 2012 rent revenue is dismissed.

The tenant acknowledged that he did move the television, resulting in additional holes to the wall in the living room. Therefore, I find, on the balance of probabilities, that the landlord is entitled to compensation in the sum of \$75.00 for repair to that wall. In relation to the hole along the baseboard, I find, on the balance of probabilities that the landlord has proven, on the balance of probabilities, that this was caused during the tenancy. It is reasonable to expect that a hole of this size would have been notated on the move-in inspection report, which was fairly detailed, and it was not. Therefore, I find that the landlord is entitled to a further \$75.00 to repair that hole.

There was no evidence before me of the age of the bathroom lock set or that the tenant was negligent in the use of the lock set. Therefore, I find that the lock set is just as likely to have broken as a result of normal wear and tear and I dismiss that portion of the claim.

In the absence of any indication that the wood trim around the fireplace was not original, I find that trim which could have been over 30 years old was beyond its useful life span and that this portion of the claim is dismissed.

In the absence of a condition inspection report and, based on the disputed testimony and witness testimony, I find, on the balance of probabilities, that the tenant did leave the unit reasonably clean, as required by the Act. The tenant did not deny that bags of

garbage may have been left in the unit; therefore, I find that the landlord is entitled to the cost of garbage disposal, as claimed.

The costs of preparing for a hearing are not the direct result of a breach of the Act; therefore, I find that the claim for photographs is dismissed.

Therefore, the landlord is entitled to the following compensation:

<b>Damages</b>	<b>Claimed</b>	<b>Accepted</b>
Repair holes to walls	\$150.00	\$150.00
Purchase and install bathroom lock set	70.00	0
Repair fireplace trim	35.00	0
Cleaning landlord time	50.00	0
Removal of garbage – 3 bags	12.00	12.00
Photographs	8.00	0
<b>TOTAL</b>	<b>\$325.00</b>	<b>\$162.00</b>

The balance of the landlord's claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the amount owed to the tenant is set off by the sum owed to the landlord. Therefore the tenant is entitled to double the \$375.00 deposit; less \$50.00 returned to him; less \$212.00 owed to the landlord; a total of \$488.00.

Based on these determinations I grant the tenant a monetary Order for the balance of \$488.00. 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

The landlord is entitled to compensation in the sum of \$162.00 for damage to the rental unit; the balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The tenant is entitled to return of double the security deposit less the amounts set out above.

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: January 22, 2013

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Residential Tenancy Branch

