



# 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 convened in response to applications filed by both the landlord and the tenant.

The landlord seeks:

1. A monetary order for damage and/or compensation;
2. An order to be allowed to retain the security deposit; and
3. A monetary order to recover the filing fee paid for this application.

The tenant seeks:

1. An order that the landlord return the security deposit; and
2. A monetary order to recover the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### **Summary of Background**

The landlord testified that this tenancy ended at the end of its fixed term on September 30, 2012. Rent was \$1,250.00 and the tenant paid a security deposit of \$625.00 on September 14, 2010. The parties did a move-out walk through together and the tenant agreed that the landlord could keep \$50.00 for cleaning costs. The landlord is also seeking \$450.00 in strata fines levied against the landlord by the strata corporation for by-law infractions they say were perpetrated by the tenant. The strata corporation alleged that the tenant smoked on two occasions in the common areas and that he was responsible for a parking lot violation.

The tenant agrees with the \$50.00 cleaning charge but disagrees with the strata fines. The tenant says he did not smoke in the building nor did he violate any parking lot by-laws.

The landlord's evidence to support his claim that the tenant is responsible for the violations alleged is the letters from the strata corporation stating that the tenant was responsible.

With respect to the tenant's claim the tenant submits that it has been 24 days since he moved out (as of the date of the filing of his application on October 24, 2012) yet his security deposit has not been returned to him. The tenant is claiming \$1,250.00 or double the security deposit as provided in Section 38 of the *Residential Tenancy Act*.

### **Analysis and Findings**

With respect to the landlord's claim for \$50.00 in cleaning costs as both parties are in agreement with this, I will allow this claim.

With respect to the landlord's claim to recover \$450.00 in strata fines levied against the landlord on the alleged conduct of the tenant I find that the landlord has failed to supply sufficient evidence that the tenant was in fact responsible for the by-law infractions alleged by the strata corporation. Moreover, I am not satisfied that the strata corporation has levied these fines in a manner that has afforded the tenant administrative fairness in particular, an opportunity to view the evidence against him and make full answer in defence. So while I do not have the jurisdiction to decide whether the landlord should be responsible for these fines, I do have jurisdiction to decide whether the tenant should be held responsible and, as set out above, I am not satisfied that it has been proven on a balance of probabilities that the tenant is responsible for the violations alleged and the claim for the fines is therefore dismissed.

With respect to the tenant's claim for recovery of double the security deposit the landlord had 15 days from receipt of the tenant's forwarding address in writing to either return the deposit or make application seeking to retain all or part of the deposit. The evidence shows that the landlord received the forwarding address on September 30, 2012 and he made an application seeking to retain the deposit on October 13, 2012. This is within the 15 day time frame and the tenant's application is therefore dismissed.

As both parties have paid \$50.00 filing fees to pursue their claims I will award recovery of the filing fee to neither party.

## Conclusion

The landlord holds a security deposit of \$625.00 with no interest having accrued. The landlord is directed to deduct \$50.00 from that deposit for cleaning fees and return the balance of \$575.00 to the tenant forthwith.

The tenant is provided with a formal Order in the above terms. If the landlord does not pay the tenant the sum awarded to him forthwith the Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: January 15, 2013

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Residential Tenancy Branch

