



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD and FF

### Introduction

This hearing was convened on the landlords' application of October 29, 2012 seeking a monetary award for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Issue(s) to be Decided

Is the damage proven, attributable to the tenant and reasonable as to cost? Is the security deposit available for claim?

### Background and Evidence

This tenancy began on June 1, 2011 and ended on August 31, 2012. Rent was \$791 per month due on the first and the landlords hold a security deposit of \$395 paid at the beginning of the tenancy.

During the hearing, the landlord presented a claim for damage to the bathroom floor from what appeared to be a cigarette burn. The claim was supported by photographic evidence, a receipt from Home Depot for \$391.82 dated September 13, 2012 for Fibrelfloor and adhesive, and a written record of the landlord's claim for four hours labour of \$100.

The tenant stated that she did not smoke and did not permit others to smoke in the rental unit, although the landlord stated that on one occasion, he had asked a guest of the tenant to finish a cigarette outside.

The tenant said that she had never noticed the burn in question, although she did see cigarette burns on the side of the tub when she moved in and believed the claimed burn predated her tenancy.

While the landlord stated he believed he had submitted copies of the move-in/move-out condition inspection reports, I had no such evidence before me, and the tenant stated that she did not have a copy of the move-out report.

The parties concurred however, that the report had been completed and included the tenant's forwarding address but she had not signed the document.

The tenant stated that she was aware of her right under section 38(6) of the *Act* to make application for return of her security deposit in double as the landlord had made application nearly two months after the end of the tenancy and receipt of her forwarding address. She stated that she simply wanted her security deposit returned as she was not responsible for the damage claimed.

### Analysis

In the absence of the condition inspection reports I find that the landlords have not proven that the damage was caused by the tenant. In addition, I have no evidence as to the age of the flooring in order to assess depreciation.

As the application was made beyond the 15 days permitted under section 38(1) within which a landlord may make application to claim upon a security deposit for damage to the rental unit, I find the security deposit was not available for set off.

Accordingly, the landlords' application is dismissed without leave to reapply.

On hearing that determination, the tenant repeated her assurance that she waives her right to seek return of the security deposit in double and will not make application.

Therefore, I find that the tenant is entitled to a Monetary Order for \$395 which constitutes return of her security deposit in full.

Conclusion

The application is dismissed without leave to reapply.

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$395 for service on the landlords.

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 21, 2013

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Residential Tenancy Branch

