



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 21, 2012, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included photos of a broken window.

At the outset of the hearing I asked the Tenant if he received a copy of the Landlord's application for dispute resolution. The Tenant began to argue that he only received one paper and nothing else. After several attempts to clarify the Tenant confirmed receipt of the application but nothing else.

The Landlord provided Canada Post tracking information and stated that he sent the Tenant his application, all of the hearing documents, and copies of the photos in the registered mail.

The parties agreed that the Tenant occupied the rental unit on a month to month tenancy which began in August 2012. Rent was payable on the first of each month in the amount of \$500.00. On the first day of the tenancy the Tenant paid \$250.00 as the security deposit. The Tenant vacated the property on November 30, 2012. The parties completed move in and move out inspection reports.

The Landlord stated that he was seeking to keep the \$250.00 security deposit as compensation for having to fix the broken window. He advised that he completed the repairs himself at the beginning of December, after the Tenant vacated. The materials cost him approximately \$40.00 plus his labor. He said that the repair took him most of the day and that he started the repair in the afternoon; therefore he should be paid the rest as compensation for his labour.

The Tenant denied breaking the window then later confirmed that the window was broken by his friend. He argued that he was not home at the time the window was broken and therefore he should not have to pay for the repair.

In closing, the Landlord stated that his upstairs tenant said there was a commotion or a fight the night of November 1, 2012 and that when they left the next morning they saw the broken window and called the Landlord.

### Analysis

I favor the evidence of the Landlord who stated he served the Tenant with copies of his application, the hearing documents, and the photos. I preferred his evidence over the evidence of the Tenant who claims he only received one piece of paper which was a copy of the application.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test*

*of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I favor the Landlord's evidence because it was forthright and credible and supported by the Canada Post tracking information. If the Tenant had only received one piece of paper, the application as he confirmed, why would he be so insistent on arguing that he did not receive anything else, when nothing else had been mentioned up to that point. Furthermore, the Tenant would not have been able to sign into this hearing if he only received the application as stated, as he would not have had the instructions and pass code information to access this hearing. Therefore, I find the Tenant was served with the photos of the broken window and I considered the evidence in making my decision.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the evidence before me I find the Tennant was responsible for the broken window as it was broken by his friend. Accordingly, I find the Tenant has breached section 32(3) the Act, leaving the rental unit window broken at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award him damages in the amount of **\$200.00** (\$40.00 materials + 160.00 for labour).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Window repair (materials & labour)	\$200.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$250.00</b>
<b>LESS: Security Deposit \$250.00 + Interest 0.00</b>	<b><u>-250.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>NIL</u></b>

Conclusion

The Landlord has been awarded \$250.00 and may retain the Tenant's security deposit as full satisfaction of his claim.

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: February 26, 2013

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Residential Tenancy Branch

