



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed on May 03, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damages – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on June 25, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as orally amended in the hearing:

1. An Order for return of security deposit (\$450.00) - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on September 02, 2012 and ended April 27, 2013 when the last tenant vacated. At the outset of the tenancy the landlord collected a security deposit in

the amount of \$450.00 which the landlord retains in trust.

The parties conducted a mutual **move in** inspection which was recorded. At the end of the tenancy the landlord *did not conduct a move out* inspection with the tenant; however, the landlord did a walk-through with the tenant on April 24, 2013, with the tenant's contents in the suite, at which time the landlord claims they noted that an electrical outlet appeared to have incurred some "burning", which the landlord purports was caused by electrically overloading the outlet. The parties agreed that on April 27, 2013, the tenant vacated during a period the landlord was to be out of town. As a result, the landlord subsequently viewed the vacated unit on April 30, 2013, without benefit of the tenant's attendance. The landlord claims the tenant left the unit unclean and caused damage to 2 electrical outlets by purportedly overloading them. The landlord provided receipts for cleaning of the unit and for the services of an electrical contractor. The landlord testified they discovered the tenant purportedly left behind a large amount of refuse and inappropriately placed recycling items in the City recycling bins, which as a result they had to hire a cleaner to sort the refuse to comply with the City, and disposed the remainder of refuse at a cost of \$50.00. The landlord provided document and photographic evidence in support of their claims, including photos of the rental unit as they found on April 30, 2013. The landlord also provided a third party statement from a witness attending April 30, 2013 with the landlord. It stated the outside bins were overflowing with refuse and the rental unit appeared clean from a distance but on closer inspection it was left un-vacuumed, floor dirty, and bathroom unclean.

The tenant disputes the landlord's claims. The tenant provided testimony that they left the rental unit clean and took with them most of the refuse from the rental unit. The tenant testified that what they placed in the City recycling bins did not fill the bins, and was placed in the bins appropriately. The tenant purports that someone other than themselves likely overloaded the bins during the parties' mutual absence following the move out. The tenant provided their own series of photographs taken when they left the unit – generally in contrast to the landlord's photographs, which the landlord highlighted in their testimony, are taken at an appreciably closer distance than the tenant's photos.

### **Analysis**

On preponderance of the document and photographic evidence submitted and the testimony of the parties, I find as follows:

If a claim is made by a party for damages or costs – in this case the landlord - the onus is on that party to prove their claims. On review of the photographic evidence I am able to compare some aspects of the parties' evidence. I am able to see sufficient similarities

in some photographs of the landlord and the tenant. For example, I am able to see aspects of the oven interior so as to clearly compare the condition of the oven. I find I prefer the evidence of the landlord in this respect, and find the tenant left the oven unclean. On balance of probabilities, I find the balance of the landlord's other photographs show a close view of other conditions in the unit, which lead me to find the landlord's evidence provided a more accurate depiction of the level of cleanliness of the unit. I find I prefer the landlord's evidence, and as a result I grant the landlord their receipted claim of **\$157.50** for cleaning.

I find the landlord has not provided evidence that the tenant was solely responsible for the contents the landlord discovered in the recycling bins upon their return from their absence. I find the tenant's account for the discarded contents is arguable, however, the burden of proving the claim of responsibility for the contents lies with the landlord, and I find the landlord has not provided this proof. As a result, **I dismiss** the landlord's claim their cost for sorting the refuse in their City bins, and the associated cost for dumping the balance of the refuse.

On balance of probabilities, I accept the landlord's evidence the tenant caused damage to 2 outlets in the unit. I find that the damage to the 2 outlets is beyond reasonable wear and tear - for which a tenant is not normally responsible. As a result, I find the landlord is entitled to the cost of repairing the 2 outlets in the sum amount of **\$161.70**, for a total award of **\$319.20**. This amount will be offset from the tenant's security deposit and any balance returned to the tenant as per their application that their security deposit be returned.

Neither party is entitled to all other litigation costs associated with advancing their respective application.

As both parties were partly successful in their applications and therefore each entitled to their filing fees, these fees cancel out one another. Therefore,

*Calculation for Monetary Order*

Cleaning costs to landlord	\$157.50
Electrical repairs to landlord	\$161.70
<i>Minus security deposit</i>	<i>-\$450.00</i>
<b>Balance - Monetary Order - to tenant</b>	<b>(\$130.80)</b>

**Conclusion**

**I Order** that the landlord retain \$319.20 of the tenant's security deposit in full satisfaction of their claim and I grant the tenant an Order under Section 67 of the Act for the remaining balance of **\$130.80**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

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: July 29, 2013



# Residential Tenancy Branch

RTB-136

**All decisions are binding and both landlord and tenant are required to comply.**

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)