



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNSD,

### Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a two bedroom strata title apartment in Burnaby. The tenancy began on October 1, 2011 for a one year fixed term and thereafter month to month. The monthly rent was \$1,300.00. The tenants paid a \$650.00 security deposit before the beginning of the tenancy.

The tenants gave notice and moved out of the rental unit at the end of April, 2013. The landlord has claimed a monetary order in the amount of \$877.00. She testified that the tenants painted the rental unit dark brown without permission. The landlord said the rental unit was painted a neutral beige colour when the tenancy began and the colour it was painted by the tenants is unacceptable. She submitted a quote in the amount of \$750.00 to paint the living room, dining room and hallway. The landlord testified that she re-rented the unit effective May 1, 2013 at a monthly rent of \$1,300.00. She said that she has not re-painted the unit, but she will have to re-paint it if she wants to rent it to a family. She said that currently it is rented to students. The landlord said the dark brown coloured paint used by the tenant's is considered bad luck to Chinese and it is culturally unacceptable and therefore affects her ability to re-rent the unit.

The landlord claimed the sum of \$67.00 for blinds. She said the tenants took down the blinds in the rental unit and installed their own, but when they moved out they took the new blinds, but did not put back the old ones. The landlord submitted a receipt for the purchase of replacement blinds.

The landlord claimed a further \$60.00 as a late fee because the tenants paid rent for April in two installments and the second payment was late.

The tenants testified that when they moved in there was no condition inspection and the landlord did not conduct a condition inspection when they moved out. The tenants said the rental unit as not painted in neutral colours when they moved in. They said that the living room walls were painted dark blue and purple and the halls were a lavender colour. The dining room was painted a light green. The tenants said that the landlord told them they could paint the rental unit and she was aware of the colour because she has been to the rental unit on numerous occasions to collect rent and did not comment on the paint when she was there. The tenants said that the painting that was present when they move in was not professionally applied; the painted areas were not properly masked and the paint was not in great shape.

With respect to the blinds, the tenants testified that there were no blinds in the bedrooms when they moved in so they purchased their own and took them with them when they moved out. The tenants said that an old sheet was used as the drapes in the living room, as was a curtain on a sliding door. The tenants denied any responsibility for the cost of painting or the replacement blinds.

### Analysis

The landlord has claimed for the cost to re-paint portions of the rental unit that were painted brown by the tenants. She has not carried out the painting for which she has claimed and her claim is based on an estimate contained in an e-mail. The landlord testified that she re-rented the unit to new tenants on May 1, 2013 for the same amount of rent that had been paid by the tenants. The tenants said that the rental unit was not painted a neutral beige when the tenancy began and the landlord said they could paint without specifying a particular colour. Although I acknowledge that the dark colour chosen by the tenants is not a desirable choice, I find, based on the tenants' evidence about the original paint, which I accept the rental unit was not painted in neutral colours when the tenancy began and would be in need of paint when the tenancy ended to satisfy the landlord's preference. The landlord succeeded in re-renting the unit and has not suffered any loss of revenue. In the absence of any move-in or move-out condition inspection report, there is no persuasive evidence from the landlord to refute the tenants' testimony about the original paint colour and condition and the absence of blinds in the rental unit, I find that the landlord has not proven, on a balance of probabilities that she is entitled to a monetary award for the cost of painting or for the replacement of blinds,

The landlord claimed payment of \$60.00 as a late fee for the late payment of April rent. I deny the landlord's claim for a \$60.00 late fee because the tenancy agreement called for a late fee of \$60.00, an amount exceeding what is allowed under the Act and the landlord is not permitted to claim an illegal fee by her tenancy agreement and then be

awarded a lesser amount on application when the payment is only permitted under the Act as the enforcement of a legitimate contractual provision.

### Conclusion

The landlord's claim for a monetary award is dismissed without leave to reapply.

The landlord continues to hold the tenants' security deposit in the amount of \$650.00. Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of her monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenants' security deposit with interest; I so order and I grant the tenants a monetary order in the amount of \$650.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: August 08, 2013

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Residential Tenancy Branch

