



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MND; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agents testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence was mailed to the Tenant, by registered mail, on October 21, 2013. A copy of the receipt and tracking numbers was provided in evidence.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for the cost of cleaning the rental unit, disposing of the Tenant's furniture, and the cost of painting the rental unit at the end of the tenancy?
- May the Landlord deduct its monetary award from the security deposit?

### **Background and Evidence**

This tenancy began on October 1, 2008. The Landlord took over the tenancy agreement from the former landlord approximately 3 years ago. At the end of the tenancy, monthly rent was \$1,061.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$465.00 on September 14, 2008.

The Tenant gave his notice to end the tenancy on September 11, 2013 and moved out of the rental unit on September 30, 2013. A move out Condition Inspection Report was completed on October 1, 2013, a copy of which was provided in evidence. The Tenant was not present at the move out inspection.

The Landlord's agents gave the following testimony:

The Landlord's agents testified that they provided the Tenant with a Notice of Final Inspection Opportunity by posting the Notice to the Tenant's door on September 30, 2013 at 1:00 p.m. A copy of the Notice was provided in evidence.

The Landlord's agents testified that the Tenant smoked in the rental unit and that the walls required a coat of Kilz and an extra coat of paint to cover the smell and the stain. They testified that the ceiling required 4 coats of paint instead of two coats. They stated that the rental unit was last painted in September, 2008. The Landlord seeks a monetary award in the amount of \$600.00 for this portion of its application.

The Landlord's agents testified that the Tenant left some furniture at the back of the rental property. The Landlord seeks an award of \$100.00 for disposal of the furniture.

The Landlord's agents stated that the bathtub and tub surround require cleaning at the end of the tenancy as well as the patio and windows. The Landlord seeks a monetary award of \$90.00 to clean the bathtub and surround, and \$45.00 to clean the patio and the windows.

The Tenant gave the following testimony:

The Tenant testified that he moved out of the rental unit by 1:00 p.m. on September 30, 2013, as required by the tenancy agreement. He stated that the Landlord did not talk to him about doing an inspection at the end of the tenancy, and that he did not see the Notice of Final Inspection Opportunity. The Tenant stated that he when to the office at 1:00 p.m. on September 30, 2013, to return the keys but the office was closed.

The Tenant agreed to the charge for disposing of his old furniture and for cleaning the bathroom. He agreed that he had left furniture behind and stated that he had not cleaned the bathroom as well as he should have.

The Tenant stated that he is disputing the Landlord's claim for painting costs and the cost of cleaning the patio and windows. The Tenant stated that he was allowed under the tenancy agreement to smoke in the rental unit and that it should be repainted before a new occupant took possession. The Tenant submitted that the patio and the windows were reasonably clean at the end of the tenancy.

## **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant agreed with the Landlord's claim for the cost of disposal of furniture and cleaning the bath and tub surround. Therefore, I allow this portion of the Landlord's claim in the total amount of **\$190.00**.

I find that the Landlord has provided insufficient evidence to prove the remainder of its claim for the following reasons:

- A landlord must give the tenant two opportunities to complete a condition inspection at the end of the tenancy, before issuing the Notice of Final Inspection Opportunity. In this case, the Landlord did not provide sufficient evidence that it gave the Tenant two opportunities and therefore, I give the condition inspection report that was completed at the end of the tenancy little weight.
- The Landlord provided no photographic evidence or copies of invoices for the cost of painting and cleaning, pursuant to the requirements of parts one and two of the test above.

The Tenant agreed to a portion of the Landlord's claim. The Landlord was not successful in proving the portion of its claim that the Tenant was disputing and therefore, I find that the Landlord must bear the cost of the filing fee.

Further to the provisions of Section 72 of the Act, I order that the Landlord deduct \$190.00 from the security deposit. The remainder of the security deposit in the amount of \$275.00, plus accrued interest in the amount of \$2.08, must be returned to the Tenant forthwith.

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Security deposit and accrued interest	\$467.08
Less Landlord's monetary award	<u>\$190.00</u>
TOTAL	<b>\$277.08</b>

**Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$277.08** for service upon the Landlord, representing the balance of the security deposit after deducting the Landlord's monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 07, 2014

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Residential Tenancy Branch

