



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNSD, O, FF

For the landlord – MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover double the security deposit; other issues and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision. The landlord testified that she did not receive a copy of the tenant's application in his registered mail. The landlord was given the option to request an adjournment for this document to be sent to the landlord by the tenant. The landlord requested at the hearing proceed as scheduled and the tenants application was read to the landlord.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The parties agree that this tenancy started on February 01, 2012. Rent for this unit was \$1,450.00 increasing to \$1,485.00 per month and was due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$725.00 on February 01, 2012. The tenancy ended on September 09, 2013.

The tenant testifies that the landlord did not complete a move in and move out condition inspection with the tenant at the start and end of the tenancy as the landlord lives in another province. Instead the landlord arranged for the previous tenants to do an inspection at the start of his tenancy and the incoming tenant did one on the day he moved into the unit. The tenant testifies that he gave the landlord his forwarding address in writing on September 24, 2013. The landlord returned part of the tenant's security deposit of \$333.00 by e-mail transfer. The landlord retained the balance of the security deposit of \$392.00 without the tenant's permission for damage to the flooring of which the tenant disputes.

The tenant testifies the landlord did not file an application to keep all or part of the security deposit until October 23, 2013 well outside the 15 days time frame. The tenant therefore seeks to recover double the security deposit less the amount already paid.

The landlord disputes the tenant's claim. The landlord testifies that she was not familiar with BC tenancy rules and understood they could retain the deposit for damages. The landlord testifies that the flooring which was new in 2012 was damaged by the tenant. There was an area on one board with a deep gouge in it. The tenant informed the landlord that this was normal wear and tear and could be filled. However the landlord spoke to two flooring companies, one of which had originally laid the floor, and they

determined that the board would have to be replaced. The flooring company has provided a quote for this work for \$392.00 which the landlord has provided in evidence.

The landlord testifies that they used this amount of the tenant's security deposit to pay for the flooring to be repaired and returned the balance of \$333.00 to the tenant.

The tenant testifies that the landlord did not inspect the flooring after it was put down. The tenant noticed some marks in the middle of the flooring some months after the flooring was laid. The tenant did not notice these marks sooner as a rug covered the area. The tenant testifies that when the flooring company returned to do some other work in the unit the tenant pointed out this mark and the flooring man put filler in the gouge. The tenant testifies that when they moved out he did a walk through with the incoming tenant and neither of them noticed the mark on the floor. When this incoming tenant did a move in inspection he then noticed a mark and documented it on his inspection report. The tenant testifies that the gouge is only about the size of a dime and is not easily noticeable. The tenant submits that if this was done during his tenancy when it would be no more than normal wear and tear. The tenant testifies that the landlord should not have asked the tenant to be responsible to inspect the floor after it was installed.

The landlord testifies that the carpets were changed to this type of flooring by request of the tenant. The tenant agreed to order the flooring and inspect it after installation before the landlord paid for it. The installers then thought everything was good with the floor and the tenant cannot now blame them for any gouges.

The landlord attempts to reach an agreement that the landlord will pay half the cost of the repair and return the other half to the tenant if the tenant does not seek double the security deposit. The tenant declines this agreement.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in

writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on September 24, 2013. As a result, the landlord had until October 09, 2013 to return the tenant's security deposit. I further find that as the landlord did not comply with sections 23(1) or 35(1) of the *Act* regarding the move in and move out inspection reports the landlord has extinguished their right to file a claim to keep all or part of the security deposit. The landlord should have returned the entire amount to the tenant within 15 days. I find the landlord did not return the security deposit therefore, I find that the tenant has established a claim for the return of double the security deposit of \$1,450.00 less the amount paid of \$333.00 pursuant to section 38(6)(b) of the *Act*.

With regard to the landlord's claim for damage to the flooring; in this matter the landlord has the burden of proof that the tenant caused this damage through the tenants actions or neglect and that it is beyond normal wear and tear. The tenant argues that this damage was noticed a few months after the flooring was laid however the landlord argues that the tenant inspected the floor and it was fine when it was first installed. The tenant also argues that due to the size of the gouge even if this was done during his tenancy it is no more than normal wear and tear. I have considered the picture of the gouge and the position of it on the floor. If this mark had been nearer to the edge of the floor and less noticeable I would agree that filling may have been an option of the landlord. However, on a balance of probabilities it is my decision that this gouge occurred during the tenancy and although it may not have been a deliberate act of the tenants it is more than normal wear and tear and affects the overall appearance of the flooring due to the position of the gouge in the floor. Consequently I uphold the

landlords claim for damages of \$392.00 and will offset this amount against the tenant's monetary award.

As both parties have been partially successful with their claim I find both parties must bare the cost of filing their own applications. A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$1,450.00
Less amount already returned	(-\$333.00)
Less landlords monetary award	(-\$392.00)
Total amount due to the tenant	\$725.00

### Conclusion

I HEREBY FIND in partial favor of the landlord's claim. The landlord may retain the amount of **\$392.00** from the tenant's security deposit

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$725.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

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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 22, 2014

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Residential Tenancy Branch

