



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Magsen Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed, the tenant confirmed she had received the landlord's documentary evidence, and the tenant stated that she had not submitted her evidence to the landlord as required by the Rules of Procedure. As a result, I have excluded the tenant's evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally, to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, to monetary compensation, and to recover the filing fee?

### Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on May 1, 2013, monthly rent was \$1000, and the tenant paid a security deposit of \$500 on or about October 25, 2011.

The tenancy ended on October 31, 2013.

The tenant testified that she had lived in the rental unit approximately for two years, with her partner.

The landlord's monetary claim is \$353, for carpet, fridge, and oven clean-up of \$168, an entrance key for \$5, and paint and damage repair to the wall for \$180.

The landlord's relevant documentary evidence included a copy of the written tenancy agreement, a handwritten statement signed by the tenant agreeing that the landlord "could deduct from damage deposit for the cleaning fee and the damage that caused by the tenant," and a document entitled "Property Condition Report," which was not signed or dated by either the landlord or tenant, copies of photos of the rental unit, a receipt for cleaning and a receipt for paint and damage repair. The landlord pointed out that the parties had initialed the Report.

The landlord submitted that the tenant damaged the rental unit and did not leave the rental unit reasonably clean, the costs for which to clean the kitchen and other items and repair is the responsibility of the tenant. The landlord further submitted that the tenant agreed to the charges as shown by the signed document. I note that there is no exact figure to which the tenant agreed upon.

In response, the tenant denied agreeing to pay for all cleaning and damage, as her understanding was that the landlord would charge \$50, to which she agreed.

As to the allegedly dirty kitchen, the tenant submitted that her property inspection report notates that there is nothing wrong with the kitchen on the move-out date.

The tenant submitted that the kitchen and oven were dirty when she moved in and spent 4 hours in cleaning at the beginning of the tenancy. The tenant further submitted that any damage, if at all, was the result of reasonable wear and tear.

In response to my question, the landlord confirmed that she had altered the property inspection report after the tenant signed, as there was an obvious error dealing with the condition of the kitchen. The landlord submitted that the condition of the kitchen was notated in the wrong room.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Sections 23 and 35 of the Act require the landlord and tenant to inspect the condition of the rental unit at the start and end of the tenancy and state that the landlord must complete a condition inspection report in accordance with the Act and regulations.

Residential Tenancy Branch Regulation # 17 states that, among other things, a condition inspection report must contain the move-in inspection date, the move out date, the move out inspection date, signatures of the parties, not initials, and a statement of the condition of the rental unit.

In the case before me, I found I could not rely on the "Property Condition Report" to depict the state of the rental unit as neither the landlord nor tenant signed the Report. I therefore had no proof that the tenant agreed with the condition as listed.

On a more serious note, I also found that I could further not rely on the Report, due to the landlord's admission that she had altered the document after the tenant had initialed it.

Due to the deficient inspection Report as noted above, I find the landlord submitted insufficient evidence to support their claim for cleaning, damage repair, and painting and I dismiss their monetary claim.

As I have dismissed the landlord's application, I decline to award them recovery of the filing fee.

As the tenant confirmed that she agreed the landlord could retain \$50 from her security deposit, I allow the landlord to retain this amount from the tenant's security deposit of \$500. I direct the landlord to return the remaining amount of \$450.

As I have ordered the landlord to return \$450 to the tenant, I grant the tenant, pursuant to section 67 of the Act, a monetary order in that amount, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, although the landlord is authorized to retain \$50 from the tenant's security deposit for the reasons stated above.

The tenant has been granted a monetary order in the amount of \$450, the balance of her security deposit.

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 18, 2014

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Residential Tenancy Branch

