



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, 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 money owed or compensation for damage or loss and alleged damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord submitted that each tenant was served with their Application for Dispute Resolution and Notice of Hearing by registered mail on January 14, 2014. The landlord supplied the registered mail receipts showing the tracking numbers of the registered mail and testified the mail was sent to the written forwarding address provided by the tenants when they dropped off the key to the rental unit.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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 tenants' security deposit, further monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord's evidence shows that this tenancy began on December 22, 2012, ended on December 31, 2013, monthly rent was \$900, and the tenants paid a security deposit of \$450 at the beginning of the tenancy. The security deposit has not been returned to the tenants.

The landlord's monetary claim is \$535, consisting of their claim that the tenants damaged the rental unit beyond reasonable wear and tear, for which they should be responsible. Some of the alleged damage included damage to the blinds, to the kitchen fan, and the heat lamp.

The landlord submitted that the tenants attended the move-out inspection, but refused to sign the condition inspection report.

The landlord's relevant documentary evidence included the written tenancy agreement, the condition inspection report, photographs of the rental unit taken after the tenancy concluded, and a document showing the charges for which the landlord claimed.

### Analysis

In a claim for damage or loss under the Act 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 party took reasonable measures to mitigate their loss.

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

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections

23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections and creating a report noting the condition of the rental unit both at the beginning and the end of the tenancy.

Residential Tenancy Regulation #20 requires that the condition inspection report contain a statement of the state of repair and general condition of each room in the rental unit as well as floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections.

In the circumstances before me, I find the landlord failed to comply with their requirements of the Act and the regulations as the condition inspection report supplied by the landlord failed to contain any notation or statement as to the condition of the rental unit, either at the move-in or move-out. Although the landlord used the standard form supplied by the Residential Tenancy Branch ("RTB"), the columns for statement of condition was left blank.

Additionally, in response to my question, the attending agent for the landlord confirmed that she was not the resident manager at the beginning of the tenancy and was not in attendance at the move-in inspection.

I therefore had no proof of the state of the rental unit at the beginning of the tenancy and I therefore could not determine whether any alleged damage or repair by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repair at all by the tenants. I also considered that I did not have photographic evidence of the state of the rental unit from the beginning of the beginning of the tenancy in order to make a proper evaluation of the claims and statements by the landlord.

Due to the lack of a compliant condition inspection report taken at the beginning of the tenancy, or other evidence, including photographs, I find the landlord submitted insufficient evidence to support their monetary claim and I dismiss their application, without leave to reapply.

As I have dismissed the landlord's application claiming against the tenants' security deposit and for monetary compensation, I order the landlord to return the tenants' security deposit of \$450 to the tenants forthwith.

Conclusion

The landlord's application is dismissed and the landlord is ordered to return the tenants' security deposit of \$450.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$450, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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.

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* and is being mailed to both the applicant and the respondents.

Dated: April 25, 2014

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Residential Tenancy Branch

