



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This was a hearing with respect to applications by the landlords and by the tenant. The hearing was conducted by conference call. The landlords and the tenant called in and participated in the hearing. The tenant was represented at the hearing by a realtor who assisted her during the hearing.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit and an order to retain the security deposit?

Is the tenant entitled to the return of her security deposit, including double the amount of the deposit?

### Background and Evidence

The rental unit is a basement suite in the landlords' house in Abbotsford. The tenancy began in February, 2009. The tenant paid a security deposit of \$460.00 at the start of the tenancy. The tenant moved out on March 29, 2014 and participated in a condition inspection on March 31, 2014.

The landlords testified at the hearing that the tenant damaged the rental unit. They said that the tenant's dog caused damage to blinds and a patio door in the rental unit. The landlords claimed the following amounts:

- Patio door screen only: \$68.06
- Patio door sash (main entrance) \$1,031.51 + installation \$180.00
- Window blind patio door (main entrance (price for 10 pieces) \$90.00
- Master bedroom window blind white: \$52.61
- Second bedroom interior door \$74.88
- Utility bill \$27.32
- Portable electric heater \$60.00

Total: 1,554.37

The landlords said that the tenant's dog damaged the patio door by jumping on it and scratching the glass. The landlords said that blinds were damaged and broken and a door was stained with oil that could not be removed. They suggested that the oil was massage oil that the tenant used in her massage therapy practice that may have been transferred from her hands or from towels that the tenant brought home from her practice to launder. The landlord submitted quotations for the replacement of the items claimed. The landlords testified that they bought an oil filled electrical heater for the tenant's use, but the tenant took it with her when she moved out. The landlords submitted a quotation for its replacement, but they did not submit a receipt for the purchase of the heater.

The landlords said that they have not replaced the items because they cannot afford the expense. The landlords have not re-rented the unit, but they are now using the rental unit for their own purposes and not as a rental unit.

The tenant acknowledged responsibility for the amount claimed for utilities, but she disputed the landlords' claims for damage to the rental unit. She said that she participated in the condition inspection that took more than an hour. She noted on the condition inspection form that she was not responsible for the oil stain on the door, whereas the landlords wrote on the form that the door was as new when the tenancy started. The tenant said that the condition inspection form was blank under the area that provided a space to specify the damage to the rental unit for which the tenant is responsible and therefore the tenant could not be held accountable for any damage to the rental unit. The landlords response was that they were unfamiliar with the form and did not fill out this box; they said that they made it plain elsewhere in the form that there was damage caused by the tenant.

The tenant testified that she did not see clients at the rental unit and had her own office space where she works as a registered massage therapist. The landlords disputed the tenant's testimony and noted that she had a massage table in the rental unit and brought home soiled towels and other supplies from her workplace. The landlords said that the oil stain had permeated the door and they received advice that it could not be removed or painted over.

The tenant said that the rental unit was professionally cleaned when she moved out. She submitted a statement from a friend who came to the rental unit on March 29, 2014. She said that the rental unit was thoroughly cleaned and the suite appeared to have been well taken care of.

### Analysis

The landlords provided little in the way of photographic evidence to support their claims of damage to the rental unit. The landlords submitted irrelevant photos of social events, but few pictures of the actual damage claimed to have been caused by the tenant. There were several pictures of the oil stained door, but none of the damaged blinds or of the patio door. The landlords said they were not able to focus their camera to capture a picture of the scratched glass on the patio door. Since the tenancy ended in March, the landlords stated that they have not replaced or repaired any of the items included in their claim; the evidence supplied to support the claims consisted of quotations obtained from a building supply store.

The landlords bear the burden of proving on a balance of probabilities that the tenant caused the damage stated in their claim and to provide proof to establish the cost of repairs to rectify the damage. The tenant has disputed all of the landlords' claims, save for the amount claimed for utilities.

Despite the tenant's denial, I find, on a balance of probabilities that the oil stain to the door in the rental unit was caused by the tenant over the course of the tenancy. I accept the landlords' evidence that the oil stain cannot be removed or painted over. I allow the landlords' claim for the cost of replacing the door in the amount of \$74.88. Based on the tenant's acknowledgement that she is responsible for the utilities in the amount claimed, I allow the landlords' claim for unpaid utilities in the amount of \$27.32.

I find that the landlords have failed to prove the other claims set out above. The tenant disputes each of them, the landlords have not provided any photographic evidence to establish these claims and they are not acknowledged by the tenant on the condition inspection report. The remaining claims are dismissed without leave to reapply. The total award in favour of the landlords is the sum of \$102.20. The landlords are entitled to recover the \$50.00 filing fee for their application, for a total award of \$152.20.

The tenant applied for the return of her security deposit, including double the amount of the deposit. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit. The landlords filed their application to claim the security deposit on April 10, 2014, which was within the 15 day

period required by the *Residential Tenancy Act*, therefore there is no basis for the tenant's claim for payment of double the amount of her deposit and the tenant's claim for payment of double her deposit is denied.

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.

Conclusion

In this application the landlords requested the retention of the security deposit in partial satisfaction of their monetary claim. I order that the landlords retain the sum of \$152.20 from the security deposit of \$460.00 and I grant the tenant a monetary order for the balance of her deposit in the amount of in the amount of \$307.80. 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 07, 2014

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Residential Tenancy Branch

