



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: MNSD  
                             For the landlord: MNSD

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of his security deposit.

The landlord applied for authority to retain the tenant’s security deposit.

The tenant and the landlord attended the hearing, and at the outset of the hearing, neither party raised any issue regarding the service of the other’s evidence or the respective applications.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the tenant and the landlord were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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

1. Is the tenant entitled to a return of his security deposit?
2. Is the landlord entitled to retain the tenant’s security deposit?

### Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on August 15, 2012, ended on or about April 1, 2014, the ending monthly rent was \$3200, and the tenant paid a security deposit of \$1400 on August 15, 2012.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenant's security deposit.

#### *Tenant's application-*

The tenant's monetary claim is in the amount of \$1400, comprised of his security deposit.

The tenant's relevant documentary evidence included a copy of the written tenancy agreement, email communication between the parties, and photographs of the rental unit and rodent poison.

The tenant testified that he provided his written forwarding address to the landlord just prior to April 2014, in a text message, and that the landlord has not returned any portion of his security deposit.

In response, the landlord acknowledged that he was aware of the tenant's new address as he has been to that location. The landlord submitted further that the tenant agreed to pay for damages to the rental unit.

#### *Landlord's application-*

The landlords' monetary claim listed in his application for dispute resolution is \$1436.18; however, the landlord failed to submit a detailed calculation of the breakdown of his monetary request.

The landlord's relevant documentary evidence included an estimate for flooring replacement, photos of the rental unit, and photos of home repair supplies.

The landlord submitted that the cost to replace the laminate flooring was \$1102.50, the costs for which the tenant verbally agreed to pay. The landlord submitted further that the tenant should be held responsible for the damage to the flooring, as the flooring was new at the beginning of the tenancy.

The landlord submitted further that the tenant caused damage or allowed damage to the door at the rear of the building, for an estimated cost of \$289.

The landlord submitted further that there was carpet damage of \$75 and that he, the landlord, should be compensated for three hours of his time in addressing plumbing issues at the rental unit.

The landlord confirmed that the flooring and door have not been replaced or repaired, and that when the work is done, his new tenants will be inconvenienced.

In response, the tenant submitted that the flooring was well used when he moved in as the landlord was working on the rental unit and that the landlord used a black utility carpet for weeks after the tenancy began. The tenant submitted further that as there were no rain gutters, water would enter the rental unit and cause floor buckling.

The tenant denied agreeing to pay for the flooring replacement. The tenant pointed out that the flooring estimate did not provide a square footage, and that he would have no way of knowing the replacement cost for the few panels to which he agreed for damage by the dog.

The tenant submitted that his small dog did occasionally scratch the back door, resulting in minor damage for which he agreed to the costs of repair. The landlord later informed the tenant that the door would have to be replaced due to the finish on the door, at a cost of \$289, and that he agreed to pay. The tenant submitted that the door, however, has not been replaced as of yet.

The tenant denied causing any plumbing damage.

### Analysis

#### *Tenant's application-*

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Under the provisions of section 88 of the *Act*, a text message communication, as was the case here when the tenant provided his forwarding address, is not recognized as a form of delivery of documents.

I therefore find that the landlord received the tenant's forwarding address in the tenant's application for dispute resolution on April 24, 2014 and that the landlord filed an application claiming against the security deposit within 15 days. I find that the tenant is entitled to a return of his security deposit of \$1400 as claimed in his application and I therefore grant the tenant a monetary award of \$1400.

*Landlord's application-*

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

In a case such as this where a landlord is claiming that the tenant damaged the rental unit beyond reasonable wear and tear, a key component in establishing a claim for such 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. In the circumstances before me, it is undisputed that the landlord has failed to meet his obligation under of the Act of completing the inspections and providing reports, which would show a record of and tend to prove the condition of the rental unit prior to the tenancy and after the tenancy ended. It is important that a tenant is provided an opportunity to note their version of the condition of the rental unit, and in this case, there was no such opportunity.

I also could not rely upon the landlord's photographs as there was no date provided on which the photos was taken nor did the photographs depict the same area as from before and after.

I therefore find the landlord submitted insufficient evidence that the tenant damaged or allowed damage to the flooring and I dismiss the landlord's monetary claim for damage to the floor.

As to the landlord's request for damage to the door, although the landlord failed to provide a copy of an estimate for the door replacement, I accept his testimony that the replacement cost was \$289 and that the door will be replaced. I also relied upon the tenant's admission that he agreed to this cost. I therefore approve the landlord's monetary claim for \$289.

As to any remaining costs applied for, I find the landlord submitted insufficient evidence to support any further losses or that the tenant was responsible for such loss, due to the lack of receipts, invoices, or a move-in or move-out condition inspection report.

Due to the above, I therefore find the landlord is entitled to a monetary award of \$289.

### Conclusion

The tenant's application for a return of his security deposit of \$1400 is granted.

The landlord's application for monetary compensation is granted in part as I have granted him a monetary award of \$289.

I direct the landlord to deduct \$289 from the tenant's security deposit of \$1400 in satisfaction of his monetary award and to return the balance of \$1111.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1111, 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.

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: September 2, 2014

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Residential Tenancy Branch

