



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in September, 2011. The monthly rent was \$1,100.00 and the tenant paid a \$550.00 security deposit on August 19, 2011.

The tenant's boyfriend moved into the rental unit as an occupant after the tenancy began. In April, 2013 the landlord's representative wrote to the tenant and advised her that she had noticed during an inspection that the tenant had performed some unauthorized painting in the living room and hallway and said that the tenant would be responsible for repainting the areas back to the original white colour, using the landlord's approved brands of paint.

The tenant gave notice to end the tenancy and moved out of the rental unit on November 30, 2014. The tenant's boyfriend continued to reside in the rental unit after November 30<sup>th</sup> and the landlord entered into a new tenancy agreement, at a higher rent, naming him as the sole tenant. On December 1, 2014 the tenant's boyfriend sent an e-mail message to the landlord wherein he confirmed that he did not require any cleaning

or repairs to the rental unit and further agreed that he would be responsible for restoring the rental unit to the condition it was in before the respondents tenancy commenced in September, 2011, including the re-painting of walls that were painted a non-standard colour during the respondent's tenancy.

The landlord submitted this application to claim a monetary in the amount of \$718.92 and for an order to retain the tenant's security deposit in partial satisfaction of the claim. At the hearing the landlord's representative submitted that the tenant should be responsible for the cost to re-paint the walls she painted in a non-standard colour, for cleaning charges, for the repair of a hole and for the cost to replace a damaged blind.

The tenant did not agree that the landlord should be entitled to claim these amounts and refused to sign a document authorizing the landlord to retain her security deposit.

### Analysis

The tenant gave notice to end the tenancy effective November 30, 2014. The landlord did not require that all occupants move out of the rental unit at the end of the tenancy and then conduct a condition inspection. It did not perform any cleaning or repairs at the end of the tenancy. Instead the landlord left one of the occupants in possession of the rental unit and entered into a new tenancy agreement with him. The landlord also accepted the new tenant's undertaking that he would be responsible for returning the rental unit to its condition prior to September, 2011, subject of course to normal wear and tear.

At the hearing I also pointed out to the landlord that the Residential Tenancy Policy Guideline No. 40, provides guidance with respect to the useful life of building elements. The guideline provides that the expected useful life of interior painted surfaces is four years. In a case where the interior walls have not been re-painted by the landlord within that period, it is unlikely that an arbitrator would find that a departing tenant should pay for re-painting. One exception may be when the tenant has painted the unit a dark colour, one that may require extra work and material to re-finish. In such a case the tenant may be expected to pay for some part of the re-painting charges.

In this case the tenant was not given an opportunity to clean, repair or re-paint the rental unit because the unit was never vacated and the landlord chose to enter into a new tenancy agreement with the existing occupant. In these circumstances, I find that the landlord is not entitled to claim any amount from the tenant's security deposit and must rely on the new tenant's commitment to perform the necessary cleaning and repairs when his tenancy ends.

## Conclusion

For the reasons stated, the landlord's application is dismissed without leave to reapply.

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.

In this application the landlord requested the retention of the tenant's security deposit in partial satisfaction of the monetary claim. Because the claim has been dismissed in its entirety without leave to reapply, it is appropriate that I order the return of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$550.00. 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: July 22, 2015

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Residential Tenancy Branch

