



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

### Issue(s) to be Decided

Is the landlord entitled to a monetary award in the amount of the tenant's security deposit for the cost of repairs to the rental unit?

### Background and Evidence

The rental unit is an apartment in Abbotsford. The tenancy began in June, 2013. The monthly rent was \$620.00 and the tenants paid a security deposit of \$10.00 at the start of the tenancy. The tenants moved out of the rental unit at the end of April, 2015. The landlord claimed that the tenants damaged the carpets and blinds in the rental unit. the landlord has requested an award to claim the following amounts as set out in a monetary order worksheet:

- |  |          |
|--|----------|
| • Home Depot, blinds:                                      | \$62.66  |
| • landlord's representative removal & disposal of Carpets: | \$90.00  |
| • Walmart, cost for photos:                                | \$19.96  |
| • Time and fuel to file application:                       | \$120.00 |

Total claim: (incorrectly added should be \$292.62))	\$302.62
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The landlord submitted several pictures of a carpet, pictures of what appeared to be some plaster or drywall damage and a picture of a portion of a blind. A form of condition inspection report provided by the landlord referred to a \$75.00 charge to the tenant for carpet cleaning. The tenants did not sign a document authorizing the landlord to retain any part of the security deposit.

The tenant provided written submissions and photographs to dispute the landlord's claim to retain the security deposit. There have been other unrelated disputes between the landlord and the tenants during tenancy and the tenant claimed that the landlord was pursuing this claim out of ill will towards the tenants. With respect to the landlord's claim to retain the deposit, the tenant testified that there was existing damage to the blinds at the beginning of the tenancy; some of the slats had tape on them to hold them together. The tenant testified that when she told the landlord's representative about the blind problem; the landlord's representative told her that when she buys new blinds she keeps the old ones and uses the slats to replace broken ones. The tenant said that the landlord's representative promised to give her some replacement slats, but never did so. The tenant provided pictures to show what she said were defects in the carpet due to bad repairs in the past that allowed the carpet fiber to pull loose and tangle her vacuum cleaner. She said her vacuum cleaner was ruined. The tenant said there were pre-existing plaster and paint defects in the rental unit when the tenancy began. The tenant said that during the tenancy she asked to have the cupboards repainted but the landlord would not do the work.

The tenant said that any damage claimed by the landlord amounted to normal wear and tear over the course of the tenancy.

### Analysis

The landlord bears the burden of proving on a balance of probabilities that the tenant has caused damage to the rental unit that exceeds normal wear and tear and of proving that the landlord is entitled to compensation in the amount claimed.

I find that the landlord has not provided convincing evidence that the tenants are responsible for the amounts claimed. I find that the tenant's evidence and the photographs supplied show that the rental unit was not in pristine condition when the tenancy began. The carpet in particular was flawed and the fact that the landlord made a claim for its removal, but not for its replacement causes me to conclude that the landlord likely considered that the carpet had reached the end of its useful life. I find that the landlord's claim for replacement blinds is unfounded and the landlord's claims for time and fuel to file an application and for the cost of photos are not recoverable costs even had the landlord been successful on this application.

## Conclusion

The landlord's claim for a monetary award and for the retention of the tenants' security deposit 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 security deposit in satisfaction of its 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 tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of \$310.00. 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: November 09, 2015

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Residential Tenancy Branch

