



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was originally scheduled to be heard by conference call on April 28, 2015, but the arbitrator determined that she was unable to communicate effectively with the landlord by telephone due to language difficulties and she ordered that the hearing be conducted as a face to face hearing. The hearing was rescheduled as a face to face hearing at the office of the Residential Tenancy Branch in Burnaby. The landlord and the tenant attended the hearing. The landlord and the tenant exchanged documents and photographic evidence prior to 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 a two bedroom suite in a house in Coquitlam. The tenancy began on February 1, 2013 for a one year term. The monthly rent was \$950.00 and the tenant paid a security deposit of \$475.00 prior to the start of the tenancy.

The landlord claimed that the tenant moved out without giving proper notice. His rent cheque for August, 2014 was returned due to insufficient funds. The landlord said that she was unable to re-rent the unit until mid-September. She also claimed that the tenant caused damage to the rental unit. The landlord claimed a monetary award in the amount of \$2,865.62, consisting of the following claims:

- Unpaid rent for August, 2014 (insufficient cheque)      \$950.00
- Bank penalty for insufficient cheque:      \$7.00

• Late payment charge for August, 2014:	\$25.00
• Lost rent for half of September, 2014:	\$475.00
• New blind purchased to replace damaged blinds:	\$123.64
• New bulbs to replace missing and broken ones:	\$43.86
• Small lock for broken back entrance door lock:	\$5.47
• Pop up strainer and new burner guards for stove:	\$28.64
• Two strainers to replace missing and broken ones:	\$20.14
• Newspaper advertisement:	\$117.80
• Cost for photographs:	\$37.02
• 15 days late payment of August 2013 rent:	\$375.00
• Bank charge for August 2013 cheque:	\$7.00
• Late payment charge for August 2013:	\$25.00
• Suite cleaning 16 hrs X \$25/hr:	\$400.00
• Repair/paint damages, install blinds, lock, bulbs 8 hrs X \$25:	\$200.00

The landlord said that the tenant left the rental unit dirty; the sinks and toilets were not cleaned and the appliances were not properly cleaned.

The tenant testified that he told the landlord in June 2014 that he was planning to move. He said that he planned to stay for July and August. The tenant said that the landlord came to inspect the rental unit in June and did not state any concerns about the condition of the unit, but she told him she wanted to start showing it soon. The tenant said that he told the landlord that he did not want to be disrupted and if she intended to show it during the month of July he would leave at the end of July. The tenant said that the landlord came to the rental unit on July 6, 2014 and began yelling at him about some items at the covered entrance to the rental unit which were not visible from the street. They included a barbeque, an air conditioning unit, some boxes intended for moving and a trash can. He said that the landlord became verbally abusive and tried to force her way into the suite. He gave the landlord a message and told her that due to the continued personal attacks, he would be leaving as soon as possible.

The tenant testified that he went on vacation for part of July and August. He claimed that the landlord evicted him while he was away on vacation. The tenant said he received a text message from the upstairs tenant who advised that the landlord was demanding the keys. The tenant said that he was in the interior of B.C. at the time and returned the keys to the landlord by mail on July 22, 2014. The landlord provided a statement from the upstairs tenant who said that the keys arrived by mail from the tenant on August 13, 2014.

The tenant said that he had belongings stored in the rental unit in boxes when the landlord unlawfully evicted him from the unit.

The tenant said that the rental unit wasn't properly cleaned when he took possession; he said that he spent three days cleaning the unit after he moved in. The tenant said that the landlord gave him a condition inspection report to sign before the former tenant had even finished moving out. The form was blank and was filled out later by the landlord. The tenant told the landlord about pre-existing damage and asked the landlord to correct the report, but she refused to do so. The tenant said that he left the unit properly clean at the end of the tenancy with no new damage to the rental unit. The tenant complained that the landlord changed the terms of the tenancy. He was to be provided with use of the yard and then the landlord allowed someone else to have use of the yard mid-way through his tenancy.

The landlord and the tenant each submitted photographs of the rental unit. The landlord submitted receipts for purchases, including receipts for blinds, lightbulbs, sink strainers and burner guards. The tenant said there was a missing sink plug in the kitchen and he denied damaging blinds.

### Analysis

The tenant apparently gave the landlord some verbal notice that he intended to move in July or August, but he did not give the landlord one month's notice in writing to end the tenancy as required by the *Residential Tenancy Act*. I find that the tenant is responsible for rent for the month of August, but not for any rent for September. The landlord claimed advertising costs; this claim is denied. The tenant is not responsible for the landlord's advertising costs. The landlord claimed late fees for the August 2014 rent and for an earlier late payment alleged to have occurred in August, 2013. These claims are denied. The tenancy agreement contains an illegal term whereby the landlord claimed late fees of \$25.00 per day. The Act and Regulation permits a maximum late fee of \$25.00 if provided for by the contract. The landlord cannot rely on an illegal term in a contract to claim late fees exceeding the amount allowed; the claims for late fees are denied. The landlord is entitled to recover bank charges of \$7.00 each for two late payments.

The landlord claimed \$400.00 for suite cleaning and \$200.00 for repairs. The tenant said that there was not damage and the rental unit was acceptably clean at the end of the tenancy. The landlord submitted a photocopy of a condition inspection report. There was no mention of any defects or damage on the report. I accept the tenant's testimony that there was no actual condition inspection and the report was simply handed to him to sign. I do not accept that it accurately records the condition of the unit when the tenancy began and I find that it is unhelpful in determining whether there was any damage caused by the tenant during the tenancy. The landlord has not submitted any invoices for cleaning or for repairs. I find that the landlord has not proven on a balance of probabilities that the tenant caused damage to the rental unit that exceeded

normal wear and tear; her claim for repairs, including the costs to blinds, bulbs, sink drains and the like is dismissed without leave to reapply.

The landlord claimed that the rental unit was not properly cleaned when the tenant moved out. I find that there is some support for the landlord's claims in her photographs of the rental unit. She claimed for 16 hours of cleaning at \$25.00 per hour. There is no invoice for cleaning and the claim is apparently for her time spent cleaning. I find the amount claimed to be inflated and excessive, based on a consideration of the testimony and a review of all the photographic evidence supplied by the landlord and by the tenant. I allow the landlord's claim for cleaning in the amount of \$100.00 only. Save for the claims expressly allowed, all other claims by the landlord are dismissed without leave to reapply.

### Conclusion

To summarize, I have allowed the landlord's claim for rent for August 2014 in the amount of \$950.00, for bank charges totalling \$14.00, and for cleaning in the amount of \$100.00. All other claims are dismissed without leave to reapply, including the claim for photographs, which are not a recoverable expense. The landlord has been partially successful in this application and she is entitled to recover the \$50.00 filing fee for a total award of \$1,114.00. I order that the landlord retain the security deposit of \$475.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$639.00. 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: December 10, 2015

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Residential Tenancy Branch

