



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Keeyan Holding Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing. The landlord submitted a quantity of documents and photographs. The tenant acknowledged receiving them.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for the cost of cleaning and repairs and if so, in what amount?

Is the landlord entitled to retain all or part of the tenant's security deposit?

### Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began February 1, 2015 for a one year term with rent in the amount of \$2,980.00 payable on the first of each month. The tenant paid a security deposit of \$1,450.00 on December 24, 2014. The tenancy ended on January 31, 2016, but it was continued for an additional month, until February 29, 2016 at a rent of \$3,066.00.

In the application for dispute resolution filed on March 14, 2016, the landlord claimed the sum of \$1,572.00, said to be the estimated cost for repairs and cleaning to the rental unit. The landlord later submitted a revised statement of its claim, but without submitting an application to amend the original claim. The landlord's revised claim sought payment of the following amounts:

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|--|----------|
| • Repair costs for closet doors and wall painting: | \$787.50 |
| • Hardwood floor damaged repair costs:             | \$168.00 |
| • Worn carpet repair costs:                        | \$320.00 |
| • Job arrangement fees (\$25.00 per job)           | \$75.00  |
| • Missing den door replaced with new door:         | \$241.50 |

• Countertop oil stains removal cost:	\$262.50
• Laundry closet and locker floor cleaning:	\$52.50
• Missing pay parking pass:	\$50.00
Total:	\$1,957.00

The landlord's agent referred to photographs of the rental unit. She testified that the tenant damaged the walls and made a number of holes that required that the walls be patched and repainted. The landlord's agent said that the rental unit was in new condition at the start of the tenancy and the carpet was damaged and frayed by the tenant during the tenancy. She also testified that the hardwood floor was damaged and dented, such that it needed to be repaired. The landlord's agent said that the tenant agreed that he was responsible for the cost to replace a missing den door.

She said that the marble countertop was stained with oil by the tenant and required cleaning. The landlord claimed for cleaning the laundry closet and locker. The landlord's agent said the tenant failed to return a parking pass and the landlord incurred a \$50.00 charge to replace it.

The tenant accepted responsibility for the cost to replace the den door, but he disagreed with substantially all of the remaining claims by the landlord. The tenant testified that the apartment may have been new when the tenancy began, but it was not well constructed. The tenant said he was a property developer and was knowledgeable with respect to these matters. The quality of materials and the fit and finish were poor. The tenant referred to the carpet damage and noted that the carpet was frayed in the area shown in the photo because the door that could be seen in the landlord's photographs was not hung properly and rubbed on the carpet, causing it to fray.

The tenant testified that he did not use the second bedroom in the rental unit and the closet door in that bedroom was off its track from the outset of the tenancy. Concerning the landlord's painting claims the tenant said that the holes referred to by the landlord were ordinary nail holes from hanging pictures and such minor holes should be considered reasonable wear and tear subject to touch up at the landlord's expense after a tenancy of this duration.

With respect to the claim for repairs to the hardwood floor, the tenant said that the floor was not hardwood, but was a poor quality of laminate flooring, that was soft and easily marked and dented during ordinary use. He submitted that any marks or dent should be considered to be ordinary wear and tear.

The tenant referred to pictures of the countertop. He did not agree that the countertop was marble. The tenant said it was made from limestone or some other porous material which is more easily marked than marble. He denied that he used the counter in an inappropriate manner for a kitchen counter and if the counter was stained by water or some spillage during food preparation this constituted normal use of a kitchen counter

and he submitted that limestone, which is porous and easily stained was a poor choice of material for a kitchen. The tenant denied that he caused markings on the countertop by any misuse and questioned what actual work was done to remove the marks.

### Analysis

The Residential Tenancy Policy Guideline with respect to responsibility for residential premises provides in part as follows:

#### **Nail Holes:**

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

#### **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The tenant testified that the closet door was not damaged, but it was off its track when the tenancy began. He said that the wall painting and repair was due to reasonable wear and tear and should not be charged to the tenant. Having reviewed the photos provided by the landlord I accept the tenant's testimony; I do not consider that the walls were damaged to an extent that exceeded ordinary wear and tear, nor do I find that the tenant is responsible for the closet repair claimed as part of the painting charge. This claim is denied.

The tenant claimed that the damaged flooring constituted normal wear and tear for which he should not be liable; he contended that the flooring was of poor quality and easily marked. I have looked at the landlord's photographs of the floor damage. I note that the pictures show several deep marks that are more than mere dents. There are several damaged spots where the holes have penetrated the surface of the flooring and broken through into the substrate. I consider that there is damage to the flooring that exceeds normal wear and tear and I allow the landlord's claim for repairs to the floor in the amount of \$168.00 as claimed.

I find that the photographs supplied by the landlord showing carpet damage support the tenant's contention that the carpet was worn where the door opened and closed and it was due to a design or installation problem and was not due to any lack of care or neglect by the tenant. The claim for carpet repair is denied.

The landlord claimed for "job arrangement fees". There is no basis for these charges and this claim is dismissed.

The tenant acknowledged that he is responsible for the claim for the missing den door in the amount of \$241.50 and this claim is allowed.

The tenant denied responsibility for a charge to remove stains to the countertop. In the condition inspection report there is a note that the counter was greasy in one corner. The tenant submitted that the countertop was limestone and easily marked in ordinary use. In the landlord's photos of the counter it appears that the cleaning of the counter merely left the counter with lighter, but more enlarged markings. On the evidence presented I find that the landlord has not shown on a balance of probabilities that the countertop was stained due to activity beyond ordinary use by the tenant and this claim is denied.

With respect to the laundry closet and locker cleaning charges, there is no mention in the condition inspection report of any deficiency in these areas and this claim is denied.

I accept the landlord's evidence that the tenant failed to return the parking pass. The landlord incurred a \$50.00 charge to replace the pass. The landlord submitted a receipt for the payment and I allow the landlord's claim for the cost of the pass in the amount of \$50.00.

I have allowed the landlord's claims for replacement of the den door in the amount of \$241.50, for floor repair in the amount of \$168.00 and for a parking pass in the amount of \$50.00. All other claims by the landlord have been dismissed without leave to reapply. The total amount awarded to the landlord is the sum of \$459.50. The landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$559.50.

The landlord is holding the tenant's security deposit in the amount of \$1,450.00. 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 partial satisfaction of its monetary claim. Because the claim has been allowed in part in an amount less than the deposit amount, it is appropriate that I order that the landlord to retain the sum of \$559.50 from the deposit in full and final satisfaction of the award in this proceeding and I grant the tenant a monetary order for the remainder of the deposit in the amount of \$890.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's application has been allowed in part. The tenant has been granted a monetary order for the balance of his deposit in the amount of \$890.50.

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 04, 2016

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Residential Tenancy Branch

