



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, 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 conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant did not attend although he was served with the landlord's application, Notice of Hearing and evidence package sent to the tenant's forwarding address by registered mail on March 1, 2016.

### 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 strata title apartment in Vancouver. The tenancy began on July 1, 2015 for a one year term and thereafter on a month to month basis. The monthly rent was \$2,500.00, payable on the first of each month. The tenant paid a security deposit of \$1,250.00 and a pet deposit of \$1,250.00 on June 8, 2015.

The tenant gave written notice and moved out before the end of the fixed term. The tenant paid rent for February 2016. The landlord's agent secured a new tenant to occupy the unit commencing March 1, 2016. According to the landlord's agent, the landlord paid a tenant placement fee to the agent in the amount of \$1,312.50.

The landlord's agent testified that the caused a significant scratch to the hardwood floor extending from one bedroom and continuing into the living room. The landlord's agent testified that the damage exceeded normal wear and tear. He supplied photos of the damage. Attempts have been made to repair the damage, including different types of wood filler and clear coat, but they have been unsuccessful. The landlord supplied an

invoice for the cost to repair the damaged floor in the amount of \$1,281.63. The tenant acknowledged the damage to the floor, but refused to agree to any deduction from his security deposit or pet deposit on the condition inspection report. The landlord's agent submitted a copy of an invoice to the landlord for a tenant placement fee equivalent to 50% of the first month's rent, plus GST. The landlord said that the claims plus the filing fee for the application amounted to the sum of \$2,694.13. In the application the landlord said that he was limiting the claim to the sum of \$2,412.50 and sought an order to retain that amount from the security deposit and pet deposit.

### Analysis

The tenancy agreement made between the landlord and the tenant did not contain any provision entitling the landlord to claim liquidated damages or a charge for re-renting the unit in the event that the tenant breached the fixed term tenancy agreement by moving out early. In the absence of a contractual provision authorizing a claim for liquidated damages, there is no basis for such an award to the landlord. The claim for liquidated damages or for recovery of a tenant placement fee is dismissed without leave to reapply.

Based on the undisputed evidence of the landlord, including photos, a condition inspection report and an invoice for repairs, I find that the damage to the floor exceeds normal wear and tear and that the landlord is entitled to recover the cost of floor repairs in the amount of \$1,281.63 as claimed. The landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$1,381.63 and I order that the landlord retain the said sum from the security deposit and pet deposit that he holds.

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 his monetary claim. Because the claim has been allowed in an amount less than the total of the deposits, it is appropriate that I order the return of balance of the tenant's security deposit and pet deposit; I so order and I grant the tenant a monetary order in the amount of \$1,118.37, being the balance of the tenant's deposits. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's claim has been allowed in the amount stated. An order has been granted for the return of the balance of the tenant's deposits.

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 18, 2016

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Residential Tenancy Branch