



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant's Executor with the Application and Notice of Hearing (the "hearing package") by registered mail on January 19, 2017. Based on the evidence of the Landlord, I find that the Tenant's Executor was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

### Issues(s) to be Decided

1. Is there a loss or damage to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for the loss or damage and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on June 1, 2013 as a month to month tenancy. Rent was \$677.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$338.50 on May 23, 2013. The Tenant's Executor said the Tenant past away on December 19, 2016. The Landlord said a move in condition inspection report was completed and signed on May 29, 2013 and a move out inspection was completed on January 3, 2017.

The Landlord said the rental complex and the Tenant's unit are all non smoking and the Tenant smoke in his unit so the Landlord had to repair and repaint the unit before it could be rented again. The Landlord referred to the no smoking clause in the tenancy

agreement as support for his claim. The Landlord submitted paid receipts for carpet cleaning in the amount of \$150.00, to clean the unit in the amount of \$303.00 and for painting and paint supplies in the amount of \$738.62. The Landlord said he is claiming a total amount for damages in the amount of \$1,191.62. .

The Landlord also requested to recover the \$100.00 filing fee for his application if he is successful.

The Tenant's Executor said he is not disputing that his father smoked in the rental unit and the unit was in poor condition but he believes the amounts for the repairs and repainting are high.

The Landlord said these are the going rates that they paid and they believe the amounts are reasonable.

The Tenant's Executor said he understood but he still thought the rates were high.

### Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has provided receipts for his claim of carpet cleaning in the amount of \$150.00, for cleaning in the amount of \$303.00 and for painting in the amount of \$738.62. I accept the Landlord's testimony and evidence and I accept the amount are reasonable for the work done.

Section 32 of the Act states a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Consequently, I award the Landlord \$1,191.62 in damages and as the Landlord has been successful in this matter, he is also entitled to recover from the Tenant's Executor the \$100.00 filing fee for this proceeding.

Further I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the damages. The Landlord will receive a monetary order for the balance owing as following:

	Carpet cleaning	\$	150.00
	Cleaning	\$	303.00
	Painting and supplies	\$	738.62
	Recover filing fee	\$	100.00
	Subtotal:		\$1,291.62
Less:	Security Deposit	\$	338.50
	Subtotal:	\$	953.12
	Balance Owing	\$	953.12

### .Conclusion

A Monetary Order in the amount of \$953.12 has been issued to the Landlord. A copy of the Order must be served on the Tenant's Executor: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 5, 2017

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Residential Tenancy Branch