



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend the hearing, which lasted approximately 34 minutes. The landlord's agent, JB ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the landlord company named in this application and that he had authority to speak on its behalf, as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package on February 16, 2017, by way of registered mail to a forwarding address provided by the tenants on July 29, 2016. The landlord provided a copy of the move-out condition inspection report with the forwarding address on it. The landlord provided two Canada Post receipts and tracking numbers with its application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on February 21, 2017, five days after each of their registered mailings, to a forwarding address provided by them to the landlord.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on May 1, 2014 and ended on July 29, 2016. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord returned \$100.00 to the tenants by way of a cheque issued on August 5, 2016. A copy of the cheque was provided for this hearing. The landlord continues to retain \$550.00 from the tenants' security deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. The landlord did not have written permission to keep any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord in the move-out condition inspection report on July 29, 2016. The landlord's application was filed on February 15, 2017.

The landlord seeks a monetary order of \$422.75 from the tenants. The landlord also seeks to recover the \$100.00 filing fee paid for this application. The landlord seeks to retain the above amounts from the tenants' remaining security deposit of \$550.00.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Damages

I award the landlord \$131.00 for replacing the garage remote for the rental unit. The landlord provided an invoice for this cost. The landlord said that the tenants did not return this remote to the landlord at the end of their tenancy. The move-in condition inspection report indicates that the tenants received a garage remote at the beginning of their tenancy. The move-out condition inspection report under the “keys” section indicates that the remote was not returned and estimated the cost at the end of the report at approximately \$130.00. I find that the tenants obtained a garage remote at the beginning of their tenancy and were required to return it to the landlord at the end of their tenancy and they failed to, so they are responsible for this cost.

I award the landlord \$40.00 for general cleaning at the rental unit. The landlord stated that the kitchen and oven were the main items requiring cleaning but noted various other areas of the rental unit requiring cleaning in the move-out condition inspection report. The landlord provided photographs of the condition of the rental unit after the tenants vacated. The landlord provided an invoice for \$50.00 and estimated \$50.00 in the move-out condition inspection report. However, the landlord provided an “hourly time record” indicating \$40.00 for cleaning and only claimed for \$40.00 in his monetary order worksheet provided with his application.

I dismiss the landlord’s claim for \$141.75 for carpet cleaning. The landlord provided an invoice for this cost. The landlord did not indicate which specific areas of the rental unit required carpet cleaning on the move-out condition inspection report. The landlord simply estimated an amount at the end of the report of \$160.00 for carpet cleaning and justified it by stating that the tenants were required to professionally clean the carpet as per clause C of the parties’ written tenancy agreement.

I dismiss the landlord’s claim for \$60.00 for blinds cleaning and \$50.00 for wall repairs because the landlord failed to provide invoices and receipts for these claims. The landlord only provided an “hourly record” for these amounts with a few details and the

total charged for the total hours on a chart filled out by its own company. There is a signature where it indicates “confirmed by (on-site manager)” but no signature where it indicates “approved by (general manager).” The landlord did not provide proper invoices or receipts with the letterhead of the company, what work was done, the amount of people who cleaned, what rate was charged for each person per hour, how many hours were expended, what the total was and confirmation that it was actually approved and paid.

As the landlord was mainly unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee paid for this application.

### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants’ security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants’ provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants’ written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord continues to hold \$550.00 from the tenants’ security deposit of \$650.00. No interest is payable on the deposit during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, since the landlord applied to retain the tenants’ security deposit, I am also required to deal with its return to the tenants even if the tenants have not made an application. I am also required to consider the above doubling provisions under section 38 of the *Act*, even if the tenants have not made an application.

This tenancy ended on July 29, 2016. The landlord received the tenants’ forwarding address on July 29, 2016, by way of the move-out condition inspection report. The landlord’s application to retain the deposit was filed on February 15, 2017, more than 6 months after July 29, 2016. Therefore, as per section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I am required to double the amount of the

tenants' security deposit that was not returned to the tenants within 15 days of July 29, 2016. The landlord returned \$100.00 to the tenants on August 5, 2016, which is within 15 days of July 29, 2016. Accordingly, I find that the tenants are entitled to double the value of \$550.00 (not \$650.00), totalling \$1,100.00.

I order the landlord to retain \$171.00 from the tenants' security deposit in full satisfaction of the monetary award made in this decision.

I order the landlord to return the remainder of the tenants' security deposit including the doubled portion, in the amount of \$929.00 to the tenants within 15 days of receiving this decision.

### Conclusion

I order the landlord to retain \$171.00 from the tenants' security deposit. I order the landlord to return \$929.00 to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$929.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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, 2017

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Residential Tenancy Branch