



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenants confirmed receipt of the hearing documents in May 2017. It was not until October 12, 2017 that they served the landlord with their written rebuttal. The Residential Tenancy Branch was served on the same date. As that evidence was given more than seven days prior to the hearing it was accepted.

At the start of the hearing the landlord reduced the claim made by abandoning the \$350.00 claim for cleaning costs.

### Issue(s) to be Decided

Is the landlord entitled to compensation to repair a hold made in the wall?

May the landlord retain the security deposit?

### Background and Evidence

The landlord explained that she had a previous tenant, S.P., who vacated the rental unit in April 2016. A move-in condition inspection report had been completed with that tenant; a copy of which showed a date of November 1, 2016. That tenant had wished to purchase the home and was, from the landlord's perspective, subletting the unit to the respondent on this application.

A condition inspection report was not completed with the respondents; it was completed with tenant S.P., even though she had not lived in the unit since April 2016.

On March 9, 2017 the landlord and the tenants signed a tenancy agreement commencing April 1, 2017, for a one month fixed term tenancy that would end effective April 30, 2017 with the tenants vacating. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that a move-in condition inspection report was not completed. The landlord said that she did not want to make the tenants vacate and then move in again.

There was no dispute that the tenants paid a security and pet deposit in the sum of \$650.00 each. That payment was made to the previous tenant, who passed the payment on to the landlord. The landlord said that this demonstrated that the tenancy which commenced April 1, 2017 was a sublet.

The tenants vacated on April 30, 2017, as required by the tenancy agreement.

The landlord used the move-in condition inspection report that had been completed with the previous tenant, to complete the move-out inspection report on April 30, 2017. The female tenant signed agreeing that there was a hole in the wall and that \$650.00 could be deducted from the security deposit and/or pet deposit, if the current tenants were found to be responsible.

The landlord has claimed:

|                  |                 |
|------------------|-----------------|
| Plaster work     | 350.00          |
| Paint wall       | 210.00          |
| Paint and primer | 85.00           |
| <b>TOTAL</b>     | <b>\$645.00</b> |

The landlord supplied an estimate for the plaster work, in the sum of \$100.00. The landlord said now that a new tenant is in the unit the fee will be \$350.00 as the new tenant would not want repair people coming and going. The cost of repair will then increase. The landlord said the bedroom must be emptied for the work to be completed. The estimate provided as evidence suggests that furniture can be covered rather than

removed.

The tenants confirmed that they did make a small hole in the plaster. The home is older and does not have drywall. The tenants do not think the sum claimed by the landlord is fair and that the cost should be much lower.

During the hearing it was confirmed the tenants have a hearing scheduled for May 8, 2018 (see cover page for file number.) The tenants have claimed return of double the security deposit. The pet deposit was previously returned. I explained that as the landlord has a claim against the deposit I would apply all of the legislation in relation to the deposit. Policy suggests that any balance of a deposit should be ordered returned to a tenant.

The tenants confirmed they could agree that their May 2018 hearing should be cancelled if the matters related to the status of the security deposit could be decided as part of this hearing.

The landlord confirmed receipt of the written forwarding address on April 30, 2017, when the parties met to complete the move-out inspection. The address was provided on the inspection report. The landlord retained the security deposit and submitted a claim against the deposit within 15 days.

### Analysis

From the evidence before me I find that the landlord had a tenancy with another individual up until April 2016. That person vacated.

Effective November 1, 2016 the landlord allowed the tenants to take possession of the rental unit. I have made no determination as to the status of that agreement as it occurred prior to the start of the tenancy that is in dispute.

There can be no doubt that a tenancy commenced on April 1, 2017; there is a signed tenancy agreement that clearly demonstrates this was the case. Therefore, pursuant to section 62(3) of the Act I find that a one month fixed term tenancy commenced on April 1, 2017.

Section 23 of the Act requires a landlord to provide at least two opportunities for a tenant to attend a move-in condition inspection. Section 24 of the Act determines that if a landlord fails to comply with section 23 of the Act the landlords' right to claim against the deposits for damage to the rental unit is extinguished. As a result Section 38(1) of the Act requires the landlord to return the deposit within 15 days of receipt of the written forwarding address and the end of the tenancy; whichever date is latest.

If the landlord has extinguished the right to claim against the deposit and fails to return the deposit within 15 days, as required by section 38(1) of the Act; section 38(6) of the

Act requires that a landlord must then pay the tenant double the amount of the deposit.

I find that a move-in condition inspection report was not completed; this was confirmed by both parties.

Therefore, I find pursuant to section 24(2) of the Act that the landlord's right to claim against the security deposit was extinguished.

As the landlord has retained the security deposit and did not return the deposit to the tenants within 15 days of April 30, 2017 I find, pursuant to section 38(6) of the Act that the landlord is holding a security deposit in the sum of \$1,300.00.

If I rely on the move-out inspection as evidence the tenants provided their written forwarding address it is consistent to accept that report as providing a record of the state of the rental unit at the end of the tenancy.

From the evidence before me I find that tenant L.W. signed the inspection report agreeing to a deduction from the security deposit in the sum of \$650.00 if the hole was found to be the fault of the tenants. The tenants have confirmed that they caused this damage.

Therefore, based on the written agreement of the tenant, given on April 30, 2017, I find that the landlord is entitled to compensation in the sum of \$395.00 for repair of the wall. I have reduced the sum payable, based on what I find to be the actual costs the landlord will face. The landlord should not be unjustly enriched as a result of this damage. I have rejected the testimony that the repair will increase to \$350.00 from \$100.00 as the result of the current tenants' wishes. The landlord has a right to make this repair in accordance with section 32 of the Act. The landlord simply needs to provide the current tenant with proper notice of entry and may assist that tenant with preparation for the work to repair the small hole in the wall. This will allow the repair person adequate access.

The balance of the landlord's claim is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Therefore, I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$495.00 in satisfaction of the monetary claim.

I find that the tenants are entitled to return of the balance of the security deposit in the sum of \$805.00.

Based on these determinations I grant the tenants a monetary Order for the balance of \$805.00. In the event that the landlord does not comply with this Order, it may be

served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As agreed by the tenants, the hearing scheduled on the tenants' application set for May 8, 2018 is withdrawn/cancelled.

### Conclusion

The landlord is entitled to compensation in the sum of \$395.00. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the tenant's security deposit in the amount of \$495.00, in satisfaction of the claim.

The tenants are entitled to return of double the \$650.00 security deposit, less the sum owed to the landlord.

The tenants' future hearing scheduled for May 8, 2018 is withdrawn/cancelled, by agreement.

This decision is final and binding and 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: October 26, 2017

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Residential Tenancy Branch