



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LANDLORD: MND, MNSD, FF  
TENANT: MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on April 6, 2018. The Landlord said the registered mail package was returned as unclaimed. The Landlord continued to say they serviced the Tenant again by registered mail in August and by email when the second registered mail package was returned unclaimed. The Landlord said the address used was the forwarding address provided by the Tenant. The Tenant said she did not pick up her registered mail but she did receive the email. I accept the service of the Landlord's hearing package to be in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on August 7, 2018 in accordance with section 89 of the Act. The Landlord acknowledged receipt of the Tenant's hearing package.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain all or part of the Tenant's deposit?

Tenant:

1. Is the Tenant entitled to recover all or part of the security deposit?

### Background and Evidence

This tenancy started on August 1, 2017 as a one year fixed term tenancy with an expiry date of July 31, 2018. Rent was \$2,850.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,425.00 on July 21, 2017. The Landlord and Tenant both agreed that a move in condition inspection report was completed on August 1, 2017 and a move out condition inspection report was completed on February 27, 2018. The Tenancy ended on February 27, 2018 by a Mutual Agreement to End Tenancy dated January 22, 2018.

The Landlord said the move out condition inspection report was completed on February 27, 2018 and although it does not have any deficiencies on it the Landlord said they discovered damage to the garbage cabinet shortly afterwards when doing a new move in condition inspection report with a new tenant. The new tenants move in condition inspection report was completed on February 27, 2018 as well. Both reports indicate the condition to be satisfactory, no action to be taken, but there are comments on the new tenant report that the hinge needed to be reattached, the top did not close completely and there were scuff marks. The Landlord said they repaired the garbage cabinet at a cost of \$787.50 and the Landlord submitted a paid receipt for that amount. The Landlord said although it was missed in the move out condition inspection with the Tenant it is obvious that the damage happened in her tenancy.

In addition the Landlord said they are seeking \$150.00 in Strata parking fines that they paid for the Tenant and \$250.00 Strata move out fee the Landlord paid the Strata for the Tenant. The Landlord said the Tenant wrote a letter on March 29, 2018 agreeing to these deductions and in the same letter gave the Landlord her forwarding address.

The Landlord said their total claim is \$150.00 for fines, \$250.00 move out fees and \$787.50 for damages to the garbage cabinet. The total claim is \$1,187.50 plus the Landlord requested to recover the filing fee of \$100.00.

The Tenant said this has been a stressful situation for her as she did not know why the Landlord did not send her security deposit back to her in March, 2018. The Tenant said she did agree to the parking fines of \$150.00 and the move out fee of \$250.00 to be deducted from her security deposit in the letter she wrote the Landlord dated March 29, 2018, but now she has changed her mind because the process has been so long.

Further the Tenant said she did not damage the top of the garbage cabinet as she did not use it. The Tenant said it was a tight fitting top and it was so small she purchased her own garbage can. The Tenant said she used her garbage can and that is why she did not report the tight fitting top on the garbage cabinet to the Landlord. The Tenant continued to say the move out condition inspection report does not indicate any damage to the garbage cabinet and she watched the Landlord open and close every door and cupboard in the unit on February 27, 2018 at the move out. The Tenant said she left the unit clean and undamaged as stated in the move out condition inspection report. The Tenant said there is a possibility that the garbage cabinet was damaged after she moved out by the Landlord or the new tenants as the top of the cabinet was tight to open.

The Tenant said she is requesting to have her full security deposit of \$1,425.00 be returned and the Tenant requested the recovery of her filing fee of \$100.00 from the Landlord.

### Analysis

Sections 23 and 35 of the Act say a landlord and tenant must complete a condition inspection report at the start and end of the tenancy. These reports are done so that both parties have a written agreement on the condition of the unit at the start and end of the tenancy. The reports are done specifically to be used as proof if damage has occurred in the rental unit during the tenancy. The condition inspection reports are a legal document signed by both parties as an agreement and as such it takes both parties to agree to any changes to the report. If there are damages discovered after the report is completed and both parties do not agree to the change then the report stands as originally completed and agreed to by the parties. In this situation the move out condition inspection report dated February 27, 2018 indicates the kitchen cabinets are in satisfactory condition and no action is required. As well the new tenant move in condition inspection report dated February 27, 2018 indicates the kitchen cabinets are in satisfactory condition, no action is required, but there are comments that the hinge needs replacing, it does not open correctly and there are scuff marks. Both reports

indicated the kitchen cabinets are satisfactory and no action is needed. Consequently I find the Landlord has not proven there is damage to the garbage cabinet and the Landlord has not proven the Tenant had any responsibility for it. The move out condition inspection report of February 27, 2018 between the Tenant and the Landlord indicates there is no damage caused by the Tenant and the Landlord accepted the condition of the rental unit as satisfactory. The Landlord's claim for damage of \$787.50 is dismissed with out leave to reapply.

With regard to the Landlord's claim for Strata parking fines totaling \$150.00 and the move out fee of \$250.00 the Tenant has already agreed to these costs being deducted from the security deposit and the Tenant has not provided any testimony or evidence that contradicts this earlier agreement. I award the Landlord \$150.00 in Strata parking fines and \$250.00 in Strata move out fees.

Further I order the Landlord to return the balance of the Tenant's security deposit \$1,425.00 less \$400.00 = \$1,025.00 forth with. The Tenant will receive a monetary order for \$1,025.00 in support of this decision.

As both the Tenant and Landlord were only partially successful in their applications, I order both the Landlord and Tenant to bear the cost of the filing fee of \$100.00 each which both have already paid.

Conclusion

A Monetary Order in the amount of \$1,025.00 has been issued to the Tenant. A copy of the Order may be served on the Landlord: 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: September 18, 2018

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Residential Tenancy Branch