



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was the hearing of applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?  
Are the tenants entitled to the return of all or part of their security deposit?

### Background and Evidence

The rental unit is a suite in the landlord's house in Kamloops. The tenancy began June 1, 2012. The tenants paid a \$600.00 security deposit at the start of the tenancy. The tenant participated in a condition inspection at the commencement of the tenancy. In November, 2012 the tenants gave written notice that they intended to move out at the end of December. They provided the landlord with their forwarding address and authorized him to show the rental unit to prospective tenants upon 24 hours notice.

The tenants paid rent to the end of December, but they moved out before the end of the month. The tenant complained that the landlord accessed the rental unit before the end of the tenancy and performed work in the rental unit without their knowledge or consent. The tenant referred to pictures showing that the landlord worked in the rental unit replacing a section of the tile floor. The tenant said this work was done on December 28<sup>th</sup> and he said that the landlord had been in the rental unit without permission on multiple occasions. The tenant applied for the return of the security deposit and claimed to be entitled to double the deposit because the landlord violated the tenants' rights.

There was a condition inspection of the rental unit on December 31, 2012. The landlord said that the tenants caused damage to the rental unit. There was paint damage

caused by ink from a computer printer that had splattered onto the walls. The landlord claimed that the tenant damaged the door frame in multiple spots from moving furniture. He said the tenants put a hole in the wall behind the door and caused some chips on a window frame when moving. He said there was some outside stucco damage caused by the tenants when moving. The landlord claimed a monetary order in the amount of the deposit. He submitted a quote for the repairs and painting in the amount of \$360.00.

The landlord acknowledged that he entered the rental unit on December 28<sup>th</sup> to replace some cracked tiles to ready the unit for occupancy by new tenants on January 1<sup>st</sup>. He said that the tenants had already completely vacated the unit and had left the keys in the unit when he entered to do the tile work.

At the hearing the tenant acknowledged that he caused the paint damage due to ink splatter, but he denied causing other damage and suggested that the other damage could have resulted from the work that the landlord performed in the rental unit. The tenant signed the condition inspection report and noted on it that he did not agree with the landlord's comments about the move-out condition of the rental unit.

The landlord has not performed the repairs because he did not have time to do the work before the new tenants took possession. Before submitting his claim the landlord offered to return \$300.00 to the tenant and retain \$300.00 on account of his repair costs. The tenant refused the offer and filed his application for dispute resolution.

During the hearing the parties were given an opportunity to discuss the settlement of their claims, but they were unable to reach an agreement.

### Analysis and Conclusion

Section 38(6) of the *Residential Tenancy Act* provides that a landlord must return a security deposit or make a claim against it within 15 days after the date that the tenancy ends or the date that he receives the tenants' forwarding address, whichever is later; otherwise he must pay the tenant double the amount of the security deposit. The landlord submitted his application for dispute resolution on January 9, 2013, which was less than 15 days after the end of the tenancy; thus there is no basis under section 38 for an award to the tenant of double the security deposit. The tenant claimed that the landlord breached his rights under the Act by entering the rental unit without permission before the end of the tenancy. The tenant has not shown that he suffered any damage as a result of the landlord entering the unit on December 28<sup>th</sup>, and if there was a breach, it was a technical one. Arguably, the tenants surrendered possession of the rental unit

when they left it vacant with the keys inside the unit and I find that the tenants have not shown that any damage or loss resulted from the landlord entering the unit on December 28<sup>th</sup>. The tenants submitted their application for dispute resolution prematurely. They filed their application on January 3, 2013 to claim the return of their security deposit; this was well before the 15 day period within which the landlord could either return the deposit or make a claim against it.

I accept the landlord's testimony as to damage in the rental unit and I find that the tenants did cause some minor damage in addition to ink splatter on the walls; I find that they damaged one wall with a hole and caused some damage to a door frame. The landlord has not performed the quoted repairs. Actual repair costs are a better measure of damages than a quotation.. I find that the landlord's proposal to the tenants to accept \$300.00 for the cost of repairs is an appropriate measure of his damages. The tenants declined that offer and the landlord was obliged to file an application for dispute resolution to claim the deposit. I find that the landlord is entitled to a monetary award of \$300.00 and to recover the \$50.00 filing fee for his application for a total award of \$350.00. I order that the landlord retain the sad sum from the deposit that he holds. The tenants are entitled to the return of the balance of their deposit in the amount of \$250.00 and I grant the tenants a monetary award in that amount. The tenants' application for dispute resolution was premature and it is dismissed without leave to reapply; I decline to award a filing fee to the tenants.

I grant the tenants an order under section 67 in the amount of \$250.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: March 25, 2013

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Residential Tenancy Branch

