



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the landlord for a monetary order and to retain the security deposit in full or partial satisfaction of any monetary order for damages. The landlord and tenant both were represented at the hearing which was held via teleconference.

### Issues(s) to be Decided

The landlord's claim relates to window cover cleaning, a lost key fee, lost access card fee and for flea treatment related to the rental unit. The issue to be decided is whether the landlord's claims can be justified and if so in what amount?

Is the landlord entitled to retain any or all of the security deposit in partial or full satisfaction of any monetary order?

### Background and Evidence

The tenancy commenced on February 15, 2006 and ended when the tenant gave notice and vacated the property on May 31, 2008. At the start of the tenancy, a security deposit of \$410.00 was collected on January 31, 2006.

The tenant's evidence at the hearing was that she vacated the property on May 31, 2008 and left the key and her forwarding address with the building manager in an envelope. The tenant does not deny that she neglected to return the access card to the landlord for which the amount of \$30.00 has been claimed by the landlord.

The building manager's evidence at the hearing is that he never received either the key or the envelope with the forwarding address from the tenant. The building manager also claims that the rental unit required the cleaning of the window coverings and flea treatment and that the tenant had agreed to the amounts for those items to be retained from the security deposit. The claim for those items is \$30.00 for the window covering cleaning and for \$68.90 for flea treatment in the rental unit. Although the building manager gave evidence that those deductions were agreed to by the tenant, he admitted that there was nothing in writing from the tenant to substantiate that claim.

The building manager at the hearing gave evidence that the flea treatment of the rental



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

unit was necessary due to the tenant having a cat in the premises contrary to the tenancy agreement. He states that he discovered the cat during a fire inspection of the premises in December 2007 but there is no evidence before me that he took any action to notify the tenant of a violation of the tenancy agreement. The tenant's evidence at the hearing is that she did not have a cat in the rental unit.

The tenant at the hearing relied upon a voice mail message left by the building manager on her phone on June 9, 2008. In that voice mail, the tenant alleges that the building manager acknowledges receiving the key and asks for the return of the access card. The tenant had earlier stated that the key had been given to the building manager in an envelope with her forwarding address. Part of the landlord's application is a fee for the key which they denied ever receiving.

The building manager at the hearing denied receiving the key and at first denied calling the tenant. He later stated that if he did, it was within two or three days on the end of May, not on June 9th. Only after the tenant played the voice mail at the hearing, in which the building manager clearly states that he has the key, was there an acknowledgement that the key had been returned and that the call had been made on June 9, 2008. the tenant also submitted a written transcript of the call. The building manager still denies that the key was accompanied by a forwarding address.

## Analysis

I quote from s. 38 of the Residential Tenancy Act:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return

Residential Tenancy Branch  
Ministry of Housing and Social Development

of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

3

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

I have examined the documentary evidence submitted to me and listened to the testimony of the tenant and the building manager at the hearing. I find that the building manager's testimony varies significantly from that of the tenant and that his denial of certain proven events lessens his credibility. I prefer the evidence of the tenant that she did not agree to certain deductions from the security deposit and draw the landlord's attention to s.39 (4)(a) above which states that the landlord must have the tenant's permission in writing to retain part of the security deposit, and in this case the landlord has not provided any proof of that such permission was obtained. I therefore deny the landlord's claim for the flea treatment and for the window cover cleaning. The landlord is also not entitled to recovery of the \$20.00 for the key, which the voice mail from the building manager proved had indeed been returned.

I find that based upon the evidence before me, that the building manager did receive the key from the tenant no later than June 9, 2008 when he left a voice mail for her and I prefer the evidence of the tenant that the key was accompanied by an envelope and her forwarding address. The landlord's evidence is that the forwarding address was not received until July 15, 2008.

I find that the landlord has not complied with the requirements of s. 38 in that they did not make an application to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing, which I have deemed to be June 9, 2008 at the latest. The landlord's application was filed on July 18, 2008.

The tenant in this case is entitled to return of the entire security deposit plus interest which equals \$422.65 minus the agreed to \$30.00 for the access card which was not returned for a balance of \$392.65.

I further find that due to the landlord's failure to comply with s. 38(1), that pursuant to s. 38 (6) (b) the landlord must pay the tenant double the amount of the security deposit, namely an additional \$410.00.

## Conclusion

I order that the landlord may retain the amount of \$30.00 from the security deposit plus interest and that the landlord pay the tenant the balance of \$392.65 plus a further \$410.00 for a total of \$802.65. This order may be filed with and enforced as an order of the Provincial Court of British Columbia.



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

I dismiss the landlord's claim for the cost of this application.

Dated: September 23, 2008

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Dispute Resolution Officer