



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNSD, FF, MND, MNDC, O

### **Introduction**

This matter dealt with cross applications filed by the tenant and the landlord in relation to the end of a tenancy. The tenant in this matter seeks a return of the security deposit and the landlord seeks a monetary order for damages to the rental unit and to retain the security deposit for damages. Both parties seek to recover the filing fee for the cost of their applications for dispute resolution.

At the hearing, one tenant appeared and stated that the other tenant was away and would not be attending. I find that the tenant that has not appeared has been notified of the hearing and as such that the hearing would continue in his absence. The landlord also appeared that the hearing which was held via teleconference.

The landlord prior to the hearing has made submissions regarding the tenant's method of service. Although the method of service may not comply, I find that the landlord was aware of the hearing, and of the nature of the application. I do not find that method of service has adversely affected the landlord's ability to prepare for the hearing.

### **Issue(s) to be Decided**

Is the tenant entitled to a return of an amount equal to double the security deposit?

Is the landlord entitled to an amount for damages, and if so is he entitled to retain all or part of the security deposit to satisfy the claim.

### **Background and Evidence**

Both parties agree to the following set of facts:

- (a) the tenancy commenced on July 1, 2007 and ended on June 30, 2008.
- (b) at the start of the tenancy a security deposit of \$997.50 was paid.
- (c) the landlord and tenant did not compete either a move-in or a move-out condition inspection at the start of end of the tenancy.
- (d) the tenant upon vacating the premises, agreed that the landlord could deduct the cost of cleaning the rental unit and the cost of repairing or replacing a closet door.

The tenant gave affirmed evidence that on the move out day that he gave the landlord his forwarding address in writing and requested the return of the balance of the security deposit. The tenant states that he has followed up this request with numerous phone calls to the landlord, but that the deposit has not been returned. The tenant states that both he and the other tenant were present when the forwarding address was given.

The landlord gave affirmed evidence that the tenant did not give him his forwarding address on the move out day as the tenant has testified to. The tenant's wife testified that she was also present at the rental unit and that the tenants were never there at the same time and that they were there at separate times. This evidence conflicts with that of the tenant, given at the hearing.

The landlord has alleged damages to the rental unit as follows:

- (a) damage to the bi-fold door (\$230.94)
- (b) damage to the exterior hallway and door frame (\$350.00)
- (c) damage to vertical blind panels (\$120.00)
- (d) massive hole in wall repair (\$1880.00)
- (e) cleaning costs (\$220.00)

The landlord has submitted written quotes detailing the repairs and has also submitted photographs showing the damage. The landlord gave evidence that the tenant had told him that some of the damage had been caused by movers when they first occupied the rental unit.

The tenant's evidence is that other than the cleaning costs and the bi-fold door damage, that he is not liable for the damages as claimed by the landlord. The tenant states that the damage was pre-existing.

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 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,

(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

I also quote from s. 23, 24, 35 and 36 of the *Residential Tenancy Act*:

### **Condition inspection: start of tenancy or new pet**

**23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

### **Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

### **Condition inspection: end of tenancy**

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

### **Consequences for tenant and landlord if report requirements not met**

**36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit,

or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

### **Analysis**

I find that based upon the evidence before me that the tenant has not proven, based upon the balance of probabilities that he gave the landlord his forwarding address in writing. The tenant's evidence is that when he gave that address that both tenants were present. The evidence from the landlord and his witness is that both tenants were not present at the same time. The tenant has not supplied any evidence from the other tenant which may have served to verify his assertions. **I dismiss the tenant's claim for return of an amount of double the security deposit.**

I also note that in relation to the landlord's claim, that he did not have the tenant's written consent under s. 38(4)(a) to retain a part of the security deposit in relation to the "agreed to items", namely the cleaning costs and the bi-fold door. **I do find that the tenant has agreed to those costs at the hearing and as I such I do find the tenants liable for those damages in the amount of \$450.94.**

In relation to the other claims by the landlord, I find that the absence of move-in and move-out condition reports to be a significant factor in this application. There is no evidence that the landlord sought to comply with the requirements to complete the condition inspections or to offer the tenants the required opportunities to participate in the inspections. I find that the landlord has not been able to prove that the damages as alleged occurred during this tenancy. **I dismiss the landlord's application for all damages other than for the cleaning and the bi-fold door repair.**

## **Conclusion**

I find that the landlord is entitled to retain the amount of \$450.94 from the security deposit plus interest valued at \$1016.55. The landlord must pay the balance of the security deposit in the amount of \$565.61 to the tenants, within 15 days of this decision.

In the event that the deposit is not returned as prescribed, the tenants may seek an order which may be filed with and enforced as an order of the Provincial Court of British Columbia.

I also find that each party is to bear the costs of their own applications in this matter.

Dated: October 6, 2008