



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** MND, MNSD and FF

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of July 10, 2009, the landlord sought a Monetary Order for damage to the rental unit, unpaid rent or utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of August 6, 2009, the tenant seeks a Monetary Order for the return of his security deposit in double on the grounds that the landlord failed to return it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

### **Issues to be Decided**

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the damages claimed, unpaid utilities and filing fee and authorization to retain the security deposit in set off.

The tenant's application requires a decision on whether he is entitled to return of his security deposit in double.

## **Background and Evidence**

Particulars of this tenancy are somewhat difficult to discern as the landlord uses a non-standard, abbreviated rental agreement and there appear to be two or three overlapping arrangements with tenants in common.

However, during the hearing, the parties gave evidence that the subject tenant moved in to the rental unit on August 20, 2008 and moved out on February 28, 2009. His share of the rent was \$375 per month and the tenant submitted evidence from the Ministry of Housing and Social development showing that a security deposit of \$187.50 had been paid on his behalf to the landlord on August 20, 2008.

While the tenant did not have a copy of his written notice to end the tenancy dated January 30, 2009, he did submit a copy of his letter to the landlord dated June 24, 2009 referring to his notice to end of January 30, 2009 and repeating his forwarding address.

The landlord stated that the security deposit was \$175 and that he had returned it to the tenant, an assertion denied by the tenant. The landlord had no documentary or third party evidence in support of his claim.

The landlord did not conduct a move-out condition inspection as required by section 35 of the *Act*.

I find as fact that the tenant gave written notice to end the tenancy, that the security deposit was \$185.50, that the landlord had the tenant's forwarding address and that the security deposit was not returned.

The landlord's application makes claim and I find as follows:

**General cleaning - \$200.** The landlord states that he paid \$200 to have the rental unit cleaned but provides no receipt in support of the claim. In addition, the landlord stated that the cleaning took place in April of 2009, considerably after the tenant moved out, and following a period in which two other tenants occupied the rental unit. Therefore, I find that the landlord has not met the burden of proof required to attribute the need for cleaning to the tenant. This claim is dismissed.

**Water bill - \$425.** The landlord claims this amount in unpaid water bills for which the tenant was responsible under the rental agreement. However, the tenant's advocate gave evidence that she had met with city officials to review the water bill on October 7, 2009. She stated that part of the landlord's claim was for a period in which the tenant was no longer resident in the rental unit and that he had paid \$40 of the bill. The tenant agrees that he is responsible for \$208.27 of the water bill. The landlord stated that he ha paid the water bill, but the tenant's advocate stated that, as of October 7, 2009, city records showed that it remained outstanding.

Given that the water account was in the tenant's name and he is the debtor with respect to the account, I cannot credit the landlord with the amount in question. The tenant's advocate stated that she would check again with the city, and if the water bill has been paid, the \$208.27 will be credited to any amount owed by the landlord to the tenant. Therefore, this claim is dismissed.

**Garbage removal - \$189.** The landlord submitted a hand-written, non itemized, paid invoice for this amount. However, the receipt is dated July 10, 2009, several months after the tenancy ended. Therefore, the landlord has not proven that the need for the garbage removal is the responsibility of the tenant and the claim is dismissed.

**City Claim - \$2,000.** This claim has something to do with city officials boarding up the rental building. However, according to the tenant, he was told by his successor tenants that the boarding had taken place in July and the landlord stated he believed it was in April. As both dates are considerably after the tenancy ended, I find that the landlord has not proven this event resulted from the actions of the tenant and the claim is dismissed.

**Signs - \$4.21.** The landlord did not specify what signs were claimed, although he raised some question as to whether he should have claimed \$421. In any event, in the absence of a receipt or specific information as to the basis of this claim, it is dismissed.

## **Analysis**

As to the landlord's claims, in order to make a monetary award for damages, the claimant must prove the damages, that the tenant was the cause of the damages, and that the amount claimed is an accurate or fair assessment of the costs. In this instance, I find that the landlord's claims have not met these tests. Therefore, the landlord's application is dismissed without leave to reapply.

As to the tenant's application, section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy, unless the tenant consents otherwise, the landlord must either return the security deposit or file for dispute resolution to make claim on it.

Section 38(6) of the *Act* states that, if the landlord does not comply, he “must” pay the tenant double the amount of the security deposit.

I find that the landlord has breached section 38(1) of the *Act* and must pay the tenant an amount calculated as follows:

Security deposit	\$187.50
Interest (August 20, 2008 to date)	1.03
To double security deposit	187.50
<b>TOTAL</b>	<b>\$376.03</b>

## Conclusion

Thus, the tenant’s copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$376.03** for service on the landlord.

The tenant and his advocate agree to check with the city to see if the water bill has been paid and if it has, to settle with the landlord for a reduced amount of \$376.03 - \$208.27 = **\$167.76**.

The landlord’s application is dismissed without leave to reapply.