



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

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

### **Introduction**

This matter dealt with an application by the Landlords for compensation for damages to the rental unit and to recover the filing fee and other miscellaneous expenses related to their dispute resolution application. The Landlords also applied to keep all of part of the Tenant's security deposit. The Tenant applied for the return of his security deposit, for compensation for the Landlords' failure to return the deposit within the time lines required under the Act, for a rebate of part of his last month's rent and to recover the filing fee for this proceeding.

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

1. Are the Landlords entitled to compensation for damages and expenses and if so, how much?
2. Is the Tenant entitled to the return of his security deposit and if so, how much?
3. Is the Tenant entitled to a rebate of rent and if so, how much?

### **Background and Evidence**

This fixed term tenancy started on September 1, 2008 and was to expire on August 31, 2009, however it ended on May 30, 2009 when the Tenant moved out. Rent was \$1,900.00 per month. The Tenant paid a security deposit of \$1,000.00 at the beginning of the tenancy however the Landlords allowed him to apply \$500.00 of it to his last month's rent.

The Landlords said they did not do a condition inspection report at the beginning of the tenancy but they took a video of the rental unit on August 25, 2008 just prior to when the Tenant moved his possessions into the rental unit. The Landlords said that the video would have shown that the rental unit was clean and undamaged. The Landlords also said that they did a move out condition inspection with the Tenant on May 24, 2009 and completed a report. The Landlords claim that the Tenant got angry and left without signing the report so they returned with the report on May 30, 2009 when they met with the Tenant and he signed (that he disagreed with it) on that date. The Landlords claimed that they did not change any of the details on the report on May 30, 2009 because with the exception of the oven, the condition of the rental unit had not changed.

The Landlords said they also took photographs of the rental unit at the end of the tenancy.

The Tenant admitted that he was angry on May 24<sup>th</sup> when the Landlords did the move out condition inspection report because he claimed that the Landlords meticulously checked each item which resulted in the inspection taking almost 2 hours. The Tenant said that when he returned on May 30, 2009, the Landlords did not recheck the condition of the rental unit but simply asked him to sign the report they had prepared on the 24<sup>th</sup> of May.

The Landlords claimed that the Tenant made alterations to the rental unit without their consent. In particular, the Landlords said that the Tenant drilled holes through floors, walls and baseboards through which cable wires were run. The Landlords said that the Tenant also installed a gate (made from a screen door frame) on the front porch of the rental unit which caused damage to the porch door frame and ruined the screen door frame.

The Tenant claimed that the Landlords verbally agreed that he could run cable wires through the rental unit as long as it was done properly and didn't cost them anything. The Tenant said that one of the Landlords showed him where the wires they might run. In any event, the Tenant said the holes were very small (5/8 inch in diameter) and close to the corners of the walls. The Tenant claimed that the holes could be easily plugged.

The Landlords claimed that they gave the Tenant permission to remove carpeting from the living room area, but in the process, they believed the Tenant (or his roommate) damaged 2 tiles near the fire place. The Landlords also claimed that they gave the Tenant permission to remove a light fixture and to replace it with one of his own provided that the Tenant returned their light fixture to its original condition at the end of the tenancy. The Landlords said, however, that at the end of the tenancy the light fixture could not be re-installed because it was missing its mounting hardware.

The Tenant said he had no knowledge if the tiles were damaged during the tenancy but claimed that it was possible they could have been damaged when his roommate removed the carpeting. The Tenant also said that he had no knowledge of any missing hardware from the light fixture. The Tenant claimed that his roommate reinstalled the light fixture but told him that it would not fit securely against the ceiling but only needed a pin.

The Landlords said that the tenancy agreement included the use of furnishings specified in an addendum including 2 antique night stands which were used by the Tenant's roommate. The Landlords said that the night stands were in good condition at the beginning of the tenancy but at the end of the tenancy they had water stains and will

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need to be refinished to restore them. The Landlords claimed that the carpets were cleaned at the beginning of the tenancy but the Tenant did not clean them at the end of the tenancy although they were soiled. The Landlords said that the Tenant and his room mate each had a dog in the rental unit.

The Tenant said he had no knowledge of the condition of the night stands at the beginning of the tenancy because they were in his room mate's room throughout the tenancy. The Tenant took no issue with reimbursing the Landlords' for their carpet cleaning expenses.

The Landlords said that they told the Tenant on May 24, 2009 that the rental unit needed to be cleaned and he agreed before he stormed out that the Landlords could have their cleaner come in to do cleaning. The Landlords said that they also tried to contact the Tenant by telephone on May 24, 2009 to see what his intentions were about cleaning the rental unit but he would not return their messages. Consequently the Landlords said on May 28, 2009 they sent the Tenant an e-mail advising him that they would have a cleaning person at the rental unit on May 30, 2008. The Landlords said that their cleaning person spent 5 hours cleaning such things as interior windows, a bathroom, kitchen cupboards and counter tops.

The Tenant claimed that before he left the rental unit on May 24, 2009, he told the Landlords that he would have his housekeeper clean the rental unit before he returned the keys on May 30, 2009 but they said that was not acceptable. The Tenant also claimed that he and his room mate cleaned the rental unit and his housekeeper also came to the rental unit to clean on May 27, 2009. The Tenant's housekeeper provided a written statement in which he claimed that he cleaned floors, counters, the bathroom, and appliances.

The Tenant took no issue with the Landlords' claims for service expenses, photographs and photocopies.

The Tenant claimed that the Landlords took possession of the rental unit a week early and therefore he sought a rebate of rent for the last week of May 2009. In particular, the Tenant said that one of his employees saw one of the Landlords at the rental property on two occasions during the last week of May 2009 and that he did not give his permission. The Landlords said that aside from May 24 and May 30 when they met with the Tenant at the rental unit, the only other time they were there was on May 25, 2009 to ensure that one of the doors was secured. The Landlords said that they left messages for the Tenant to advise him that they would be going to the rental unit. The Landlords denied taking possession of the rental unit early and claimed that the Tenant had possession of it until he returned his keys on May 30, 2009.

## **Analysis**

### **Tenant's Claim:**

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant. I find that the Tenant did not give the Landlords his forwarding address in writing and therefore s. 38(6) of the Act does not apply.

I also find that there is insufficient evidence that the Landlords took early possession of the rental unit. I find the Landlords attended the rental unit on 3 occasions during the period, May 24 – 30, 2009, and that the Landlords had the Tenant's consent to be there on the 24<sup>th</sup> and the 30<sup>th</sup>. The Landlords argued that they had a right to attend the rental unit on May 25, 2009 to ensure a door was not left open. While that may be true, the Landlords did not have had a right to enter the rental unit on May 25, 2009 without the Tenant's consent when he was still entitled to exclusive possession of it. However, there is no evidence that the Landlords entered the rental unit on May 25, 2009. Consequently, the Tenant's application for a rebate of rent is dismissed.

### **Landlords' Claim:**

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear.

Section 23 of the Act requires a landlord to complete a condition inspection report at the beginning of a tenancy with the tenant. The purpose of having both parties participate in a move in condition inspection report is to provide conclusive evidence (see s. 21 of the Regulations to the Act) of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In the absence of a move in condition inspection report, I find that there is insufficient evidence that the Tenant damaged the tiles in the living room during the tenancy. For similar reasons, I find that there is insufficient evidence that the Tenant (or his room

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mate) damaged 2 side tables during the tenancy. I further note that the move out condition inspection report does not specifically refer to these damages. Consequently, these parts of the Landlords' claim are dismissed.

RTB Policy Guideline #1 at p. 2 states that "any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition. The Tenant admitted to having holes drilled through walls and floors to run cable wires and I find on a balance of probabilities that he did not have the Landlords' consent to make those alterations. I also find that the Tenant did not have the Landlords' consent to install a gate onto the front entrance of the rental unit and as a result, the Tenant must compensate the Landlords for the repairs set out in the estimate provided by them. I find that the Landlords' estimate must be reduced as it includes an amount for repairing tiles which, as indicated in the reasons above, is not recoverable. Consequently, I award the Landlords \$850.00 for these repairs.

In the absence of any evidence from the Tenant that the light fixture could not be used without the missing mounting equipment or that the mounting equipment could be replaced, I find that the Landlords are entitled to recover the cost of replacing the light fixture and I award them \$129.00 (plus taxes) for this item.

The onus is on the Landlords to show that the rental unit was not reasonably clean at the end of the tenancy and that as a result, they had to incur cleaning expenses. The Tenant disputed the move out condition inspection report because he argued that it was not amended after his housecleaner had cleaned the rental unit it on May 27, 2009. Consequently, I give little weight to the Landlords' move out report. Furthermore, I am not satisfied that the photographs relied on by the Landlords were taken only on May 30<sup>th</sup> as the Tenant claimed that the Landlords also took some in his presence on the May 24<sup>th</sup>. As a result, I find, however, that there is insufficient evidence that the rental unit was not reasonably clean at the end of the tenancy and the Landlords' claim for general cleaning expenses is dismissed.

I find that the Landlords are entitled to compensation for a damaged screen door and although they did not provide a receipt or evidence in the form of an estimate, I find that the amount of \$30.00 is reasonable and award them that amount. The Tenant did not dispute the Landlords' claims for carpet cleaning, service expenses, photographs and photocopies and as a result, I find that the Landlords are entitled to recover the amounts they have claimed. As the Landlords have been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding.

Sections 23 and 35 of the Act require a landlord to complete a condition inspection report at the beginning and at the end of a tenancy and to provide a copy of it to the tenant. In failing to complete a move in condition inspection report, I find the Landlords

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contravened s. 23 of the Act and pursuant to s. 24(2) of the Act, the Landlords' right to claim against the security deposit for damages is extinguished. I also find that the Landlords contravened s. 19 of the Act by receiving a security deposit that was more than ½ of a month's rent.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to keep the balance of the Tenant's security deposit plus accrued interest in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Wall & Floor Repairs:	\$850.00
Light fixture:	\$144.48
Screen door:	\$30.00
Carpet cleaning:	\$122.51
Service expenses:	\$99.86
Photographs:	\$37.59
Photocopies:	\$14.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,348.44
Less: Security deposit:	(\$500.00)
Accrued interest:	<u>(\$5.00)</u>
Balance Owing:	\$843.44

## **Conclusion**

The Tenant's application is dismissed. A monetary order in the amount of **\$843.44** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 19, 2009.

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Dispute Resolution Officer