



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied for the return of a portion of the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted a package of evidence to the Residential Tenancy Branch on September 21, 2010. The Agent for the Landlord stated that copies of this evidence were mailed to the Tenant by registered mail on September 20, 2010. Section 90 of the Act stipulates that documents served by registered mail are deemed received five days after they are mailed which, in these circumstances was September 25, 2010. The Tenant acknowledged receiving the Landlord's evidence on October 01, 2010.

### Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to the return of a portion of the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on May 01, 2009; that the Tenants were required to pay monthly rent of \$1,390.00; that the Tenants paid a security deposit of \$695.00; that the Tenants gave proper notice to end this tenancy on April 30, 2010; that the Tenants returned the keys to the rental unit on April 27, 2010; and that the Tenant provided the Landlord with their forwarding address, in writing, on April 27, 2010.

The Agent for the Landlord and the Tenant agree that at the beginning of this tenancy the Tenant was given a condition inspection report and was asked to sign it, although the parties did not jointly inspect the rental unit at the beginning of the tenancy.

The Agent for the Landlord and the Tenant agree that at the end of this tenancy the Tenant was given the condition inspection report and was asked to sign it, although the parties did not jointly inspect the rental unit at the end of the tenancy.

The Agent for the Landlord and the Tenant agree that the Landlord returned \$561.50 of the security deposit to the Tenants on, or about, May 04, 2010.

The Agent for the Landlord stated that the Landlord has written authorization from the Tenant to retain \$133.50 from the security deposit. The Landlord submitted a copy of the Condition Inspection Report. On the last page of the Condition Inspection Report the Tenant signed below the entry that reads: "I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposits and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the excess amount". Although the Balance Due Landlord is not totalled, the Landlord has made an entry of \$60.00 for window covering cleaning and \$70.00 plus GST for carpet cleaning.

The female Tenant stated that when the Building Manager told her to sign the Condition Inspection Report on April 27, 2010 she assumed that her husband had agreed to the deductions noted on the report. She stated that when she met with her husband shortly after signing the report he advised her that he had not agreed to the deductions made and that they subsequently advised the building manager that they did not agree with the deductions shown on the report. The Tenant contends she would not have signed the report if the deductions had been clearly explained to her.

The Building Manager stated that he told the female Tenant that there would be a deduction for cleaning the carpets and the blinds; that the male Tenant was present when he explained the deductions; and that the male Tenant returned five minutes after leaving the building to say that they did not agree to the deductions noted on the Condition Inspection Report.

The Tenant argued that the Landlord is not entitled to compensation for cleaning the carpet because the carpets were not clean at the beginning of the tenancy. The Agent for the Landlord stated that the carpets were clean at the beginning of the tenancy.

The Tenant argued that the Landlord is not entitled to compensation for cleaning the blinds because the blinds were replaced at the end of the tenancy and did not require cleaning. The Agent for the Landlord stated that the blinds were cleaned at the end of the tenancy and were not replaced.

The Tenant raised concerns about the Landlord painting in April of 2010, after the Tenants had stopped residing in the rental unit but before they returned the keys to the Landlord. The Tenant was not permitted to give evidence in this regard as it is not relevant to whether the Landlord should return a portion of the security deposit.

### Analysis

The undisputed evidence is that the Tenants entered into a tenancy agreement that required them to pay monthly rent of \$1,390.00 on the first day of the month; that they paid a security deposit of \$695.00; that they vacated the rental unit on April 27, 2010; that the Tenants provided the Landlord with their forwarding address, in writing, on April 27, 2010; and that \$561.50 of the security deposit was returned to the Tenants on, or about, May 04, 2010.

Section 23(1) of the *Act* stipulates that a landlord and tenant must together inspect the condition of the rental unit on the day the tenant is entitled to possess the unit or on another mutually agreed day. I find that the Landlord did not comply with this section of the *Act*, as the parties did not jointly inspect the unit at the start of the tenancy.

Section 24(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit for damages to the rental unit is extinguished if the landlord does not comply with section 23(3); does not participate on either of the times established pursuant to section 23(3); and does not complete the condition inspection report and give a copy of it to the tenant. In these circumstances the Landlord has not filed an Application for Dispute Resolution claiming against the security deposit, so section 24(2) is not applicable and will not be considered when rendering a decision in this matter. Section 24(2) does not prevent a tenant from giving a landlord permission to retain a portion of a security deposit.

Section 35(1) of the *Act* stipulates that a landlord and tenant must together inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. I find that the Landlord did not comply with this section of the *Act*, as the parties did not jointly inspect the unit at the end of the tenancy.

Section 36(2) of the *Act* stipulates that unless the tenant has abandoned the rental unit the right of a landlord to claim against a security deposit for damages to the rental unit is extinguished if the landlord does not comply with section 35(2); does not participate on either of the times established pursuant to section 35(2); and does not complete the condition inspection report and give a copy of it to the tenant. In these circumstances the Landlord has not filed an Application for Dispute Resolution claiming against the security deposit, so section 36(2) is not applicable and will not be considered when rendering a decision in this matter. Section 36(2) does not prevent a tenant from giving a landlord permission to retain a portion of a security deposit.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I find that the female Tenant gave the Landlord written authorization to retain \$133.50 when she signed the Condition Inspection Report on April 27, 2010.

I do not accept the female Tenant's argument that she did not understand what she was agreeing to do when she signed the last page of the Condition Inspection Report the Tenant signed below the entry that reads: "I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposits and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the excess amount". I find that this entry is self explanatory and that the Tenant knew, or ought to have known, what she was signing when she agreed to those deductions.

Although the Balance Due Landlord is not totalled, the Landlord has made an entry of \$60.00 for window covering cleaning and \$70.00 plus GST for carpet cleaning, and I find that it is reasonably apparent that the Tenant was agreeing to those deductions. In reaching this conclusion I was influenced by the Building Managers testimony that he told the female Tenant that the deductions were for cleaning the blinds and the carpets. I find, on the balance of probabilities, that it is likely that the deductions were explained to the Tenant as it is not reasonable to believe that a Tenant would agree to deductions without being advised of the reasons for the deductions.

In determining this matter, I did not consider whether the carpets and blinds needed to be cleaned. As the Tenant agreed, in writing, that the cost of cleaning could be deducted from the security deposit, the Landlord does not now need to establish that the items needed cleaning. Rather, the Tenant would have to prove that she did not agree to the deductions and I find that the Tenant has submitted insufficient evidence to show that she did not provide the Landlord with written consent.

### Conclusion

As I have found that the Landlord had the right to retain \$133.50 from the Tenants' security deposit and the remainder of the deposit was returned to the Tenants, I dismiss the Tenants' application for the return of a portion of the security deposit.

As I have found the Tenants' Application for Dispute Resolution has been without merit, I dismiss the Tenants' application to recover the cost of filing this Application for Dispute Resolution.

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 06, 2010.

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Dispute Resolution Officer