



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, (MND), FF

### Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 3, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 1, 2010 and ended on February 23, 2011 when the Tenant moved out. Rent was \$900.00 per month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report at the beginning of the tenancy. The Landlord's agent said she arranged a move out inspection with the Tenant for February 23, 2011 however the Landlord's agent claimed the Tenant was not ready to do it on the day and advised the Landlord's agent to complete it at a later date without her. The Landlord's agent said she completed the move out condition inspection report on February 28, 2011 without the Tenant present.

The Landlord's agent said she incurred expenses of \$151.20 to remove furnishings left behind by the Tenant. The Landlord's agent also claimed that she incurred general cleaning expenses of \$115.20 (including cleaning supplies), carpet cleaning expenses of \$168.00 and repair expenses of \$50.00.

### Analysis

Section 35(5) of the Act says that a landlord may do the (move out condition) inspection and complete and sign the report without the tenant *if* the landlord has complied with s. 35(2) and the tenant does not participate on either occasion or the tenant has abandoned the rental unit. Section 35(2) says a Landlord must offer a tenant two opportunities as prescribed (by s. 17 and s. 18 of the Regulations) for the inspection. Section 17 of the Regulations to the Act says that the 2<sup>nd</sup> opportunity must be made by providing the Tenant with a form called, "Notice of Final Opportunity to Schedule a Condition Inspection." The Landlord's agent admitted that she did not give the Tenant a second opportunity to schedule another move out inspection in the prescribed form and as a result, I find that the Landlord did not comply with s. 35 of the Act and accordingly I give the move out condition inspection report little weight.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Consequently, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean and that any damage was the result of her act or neglect rather than reasonable wear and tear.

The Landlord did not provide any documentary evidence in support of the expenses it claimed although the Landlord's agent claimed that she submitted a copy of an invoice for furniture removal to the Residential Tenancy Branch by fax on June 9, 2011. RTB Rule of Procedure #3 says that an applicant must submit any documentary evidence with the Application for Dispute Resolution but in any event no later than 2 clear business days prior to the dispute resolution hearing. As of the date of this Decision, that invoice had not been received. In the absence of any reliable evidence from the Landlord that it incurred any expenses for cleaning and repairs, I find that there is insufficient evidence to support its claim and the Landlord's application is dismissed in its entirety without leave to reapply. I order the Landlord pursuant to s. 38(1) of the Act to return the Tenant's security deposit of \$450.00 to her forthwith.

### Conclusion

A Monetary Order in the amount of **\$450.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: June 14, 2011.

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Residential Tenancy Branch