



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application filed February 24, 2011: MNSD; FF

Landlord's application filed April 13, 2011: MNR; MND; MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a Monetary Order for unpaid rent, damages to the rental property and compensation for damage or loss; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that each party served the other with the Notice of Hearing documents in accordance with the provisions of Section 89(1) of the Act.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary award in the amount equivalent to double the security deposit, pursuant to the provisions of Section 38(6) of the Act?
- Is the Landlord entitled to a monetary award for unpaid rent, the cost of cleaning the rental unit at the end of the tenancy, and the cost of replacing the keys to the rental unit?

### **Background and Evidence**

This tenancy began in October of 2009. Monthly rent was \$910.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 at the beginning of the tenancy.

The Tenant provided the following relevant testimony:

On January 6, 2011, the Tenant gave the Landlord verbal notice that he would be ending the tenancy effective January 31, 2011. The Tenant asked the Landlord if he could stay until February 15, 2011, if the rental unit was not re-rented for February 1, 2011. The Tenant moved out at the end of January, 2011. The Tenant gave the Landlord written notification of his forwarding address on January 15, 2011.

The Tenant and his son cleaned the rental unit at the end of the tenancy, but did not shampoo the carpets.

The Tenant's witness gave the following relevant testimony:

The witness is the Tenant's son. He was present at the end of the tenancy, when he, his sister and their kids cleaned the rental unit. He believes the rental unit looked reasonably clean and the carpets looked fine.

The Landlord and his wife are very particular people with respect to cleanliness. The Landlord was concerned about the condition of the rental unit and although the Tenant believed it was sufficiently clean, he agreed that the Landlord could retain \$100.00 from the security deposit for additional cleaning.

The Tenant moved out of the rental unit at the end of January but it took a few days to move all of his belongings. The Witness believes the keys to the rental unit were returned to the Landlord on February 5, 2011.

The Landlord provided the following relevant testimony:

After the Tenant told him he was moving out of the rental unit, the Landlord drafted a mutual end of tenancy agreement which ended the tenancy on February 15, 2011. The Tenant declined to sign it.

On February 2, 2011, the new tenants viewed the rental unit and the Landlord told them they could move in when the Tenant finished cleaning. On February 7, 2011, the Tenant arrived with a truck to take things away. On February 8, the Tenant came again, but said he was too busy to clean and agreed that the Landlords could clean the rental unit and deduct the amount off the security deposit. The Tenant finished moving out on February 10, 2011, and did not return any keys to the Landlord. The Landlord seeks to recover the cost of cutting new keys and the equivalent of ½ month's rent for loss of revenue.

On February 10, 2011, the new tenants told the Landlord that the rental unit was dirty and needed to be cleaned. The Landlord provided a copy of a letter from the new tenant in evidence. It took the Landlord 9 hours to clean the rental unit. The Landlord seeks compensation in the amount of \$225.00 (9 hours x \$25.00 per hour) for cleaning the rental unit, plus the cost of cleaning supplies and three light bulbs to replace burned out bulbs.

On February 11, 2011, the Landlord had the carpet professionally cleaned. The Landlord provided a copy of the receipt in evidence. The carpet took two days to completely dry and the new tenants moved in on February 14, 2011. The Landlord seeks to recover the cost of having the carpets shampooed at the end of the tenancy.

The Landlord seeks to recover the cost of making photocopies and registered mail.

**Analysis**

Regarding the Tenant's Application

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Tenant provided the Landlord with his forwarding address on January 15, 2011. The Tenant and his witness differed with respect to the date that the Tenant moved out of the rental unit. I find that the Tenant did not complete his move out until he had removed all of his possessions from the rental unit. I accept the Landlord's testimony that he moved out completely on February 10, 2011.

I find that the Tenant agreed that the Landlord could retain \$100.00 from the security deposit towards the cost of cleaning the rental unit.

The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, the Tenant is entitled to a monetary award calculated as follows:

Security deposit	\$450.00
Less amount Tenant agreed Landlord could retain	<u>&lt;\$100.00&gt;</u>
Subtotal	\$350.00
Double residue of security deposit	<u>x 2</u>
TOTAL MONETARY AWARD FOR TENANT	\$700.00

## Regarding the Landlord's Application

Section 45(1) of the Act states:

### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act states:

### **Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy **must be in writing** and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.
- (emphasis added)

Section 67 of the Act states:

### **Director's orders: compensation for damage or loss**

- 67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant did not provide the Landlord with written notice to end the tenancy in accordance with the provisions of Sections 52 and 45 of the Act. I find that the Landlord suffered a loss of revenue as a result of the Tenant failing to comply with the Act, and that he is entitled to a monetary award in the equivalent of ½ a month's rent, \$455.00.

Residential Tenancy Policy Guideline 1 provides the responsibilities of landlords and tenants with respect to maintenance and cleaning of a rental unit. The following is an excerpt from Guideline 1:

### **CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

### **LIGHT BULBS AND FUSES**

1. The landlord is responsible for:
  - making sure all light bulbs and fuses are working when the tenant moves in.
  - replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
  - repairing light fixtures in hallways and other common areas like laundry and recreational rooms.
2. The tenant is responsible for:
  - Replacing light bulbs in his or her premises during the tenancy,
  - Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and

- Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

The Landlord provided documentary evidence that the carpets were cleaned before the Tenant moved in. This tenancy began in October, 2009 and ended in February, 2011. Therefore, as the tenancy was more than one year, the Tenant was required to clean the carpet at the end of the tenancy. I find that the Landlord is entitled to recover the cost of shampooing the carpets, in the amount of \$264.54.

The Tenant is responsible for replacing light bulbs during the tenancy and therefore I find that the Landlord is entitled to recover the cost of replacing three light bulbs, in the amount of \$1.57.

There was disagreement with respect to whether or not the Tenant had returned the keys to the rental unit. The Landlord testified that he did not receive any keys, yet the Condition Inspection Report the Landlord provided indicates that one set of keys was returned. The Landlord did not provide sufficient evidence of the cost of replacing the keys or that the keys were not returned and this portion of his application is dismissed.

Section 37 of the Act states:

### **Leaving the rental unit at the end of a tenancy**

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Tenant's witness stated that the Landlord had high standards with respect to cleanliness. The requirement is that tenants leave a rental unit in a **reasonably clean** state at the end of the tenancy. In this case, the Landlord expected that the Tenant

leave the unit in its “original clean condition”. The Tenant agreed that the Landlord could retain \$100.00 from the security deposit towards cleaning the rental unit and I have already set that amount off from the security deposit. I find that the Landlord has been sufficiently compensated for the extra cleaning. The Landlord’s application for the labour and material costs of cleaning the rental unit is dismissed.

Costs of preparing for Dispute Resolution Hearings (i.e. registered mail costs, photocopies, etc.) are not recoverable by either party and this portion of the Landlord’s claim is dismissed.

The Landlord has established a monetary award, calculated as follows:

Loss of revenue	\$455.00
Cost of carpet cleaning	\$264.54
Cost of replacing light bulbs	<u>\$1.57</u>
TOTAL MONETARY AWARD FOR LANDLORD	\$721.11

#### Filing Fees and set off

Both Applications had merit and I order that the parties each bear their own costs of the filing fee.

I hereby set off the Tenant’s monetary award against the Landlord’s monetary award and provide the Landlord with a Monetary Order for the balance, \$21.11.

#### Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$21.11** for service upon the Tenant. This Order may be filed in the Supreme 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: May 17, 2011.

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Residential Tenancy Branch