



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was the hearing of applications by the tenant and by the landlord. The tenant applied for the return of her security deposit, including double the amount of the deposit. The landlord applied for a monetary order for loss of revenue and for damage, repairs and cleaning to the rental unit. The hearing was conducted by conference call. The landlord and the tenant participated in the hearing.

### Issue(s) to be Decided

Did the tenant pay a security deposit and if so, is the tenant entitled to the return of a security deposit?

Is the landlord entitled to a monetary order and an order to retain the security deposit if paid?

### Background and Evidence

The rental unit is an apartment in Burnaby. The tenancy began on May 1, 2010. Monthly rent was \$1,640.00. I was not provided with a complete copy of the tenancy agreement, but according to the copy page provided from the agreement, the tenant paid a security deposit of \$1,640.00 on April 8, 2010. The tenant said that she paid rent in the amount of \$1,640.00 for May and paid a damage deposit in the same amount on April 8, 2012. The tenant testified that she also paid the landlord \$350.00 as a pet deposit on November 1, 2011.

On February 3, 2012 the tenant gave the landlord verbal notice that she intended to move out of the rental unit at the end of February. She moved out on February 20<sup>th</sup>. The tenant said she "did a verbal walk through" the rental unit with the landlord on February 20<sup>th</sup>. He pointed out a piece of the base board that was chewed by her dog, some black marks left by the vacuum on the baseboards, holes in the wall from a curtain rod and a coffee stain on the master bedroom carpet. The tenant told the landlord that she could not clean behind the appliances because she had a back injury that prevented her from moving them. She did pay to have the carpets cleaned at on February 20<sup>th</sup>. On February 24, 2012 the tenant sent a letter to the landlord with her forwarding address and requesting the return of her damage deposit.

On March 2<sup>nd</sup>, 2012 the landlord sent an e-mail to the tenant. He said that he had inspected the rental unit and identified damage caused by the tenant. He said that he had a quote for \$740.00 to repair drywall and trim damage and \$320.00 for cleaning the kitchen and spot cleaning carpet. The landlord claimed a further \$60.00 for closet door repair, \$55.00 for supplies and \$7.00 for an NSF cheque charge for a total of \$1,182.00. He said that he could forward the difference to her in the form of a personal cheque; presumably he meant the difference between her deposit and the sum of \$1,182.00. Later he sent a photocopy of a cheque from the tenant in the amount of \$1,640.00; "He asked: "If you (name of Tenant) have confirmation that an alternate form of damage deposit was used, please forward to me for my records. This document was included with other documents sent to the tenant before the hearing.

The landlord testified that he did not receive a security deposit from the tenant. He provided a copy of his bank records that he said showed that he deposited only one payment of \$1,640.00 in May, 2010 and there was payment from the tenant and no deposit in April. The landlord provided a copy of a cheque from the tenant dated April 1, 2010 that he had in his possession that he testified has never been cashed. The cheque is payable to the landlord and contains the memo "Rent".

In his application for dispute resolution the landlord claimed the following amounts:

• Loss of rental income for March	\$1,640.00
• Cleaning, 9hrs @ \$20/hr:	\$180.00
• Cleaning supplies	\$55.00
• Spot cleaning carpet, 3.5hrs/\$15 per hour	\$52.50
• Miracle carpet cleaner	\$18.00
 Total	 \$305.50
• Repair to drywall and mouldings	\$740.00
• Master bedroom carpet replacement	\$723.00
 Total	 \$3,408.50

The landlord said that the living room carpet was extensively damaged by the tenant's dog and would cost \$3,500.00 to replace. This did not form part of his claim.

The landlord submitted an invoice for cleaning and supplies in the amount of \$305.50. He submitted a quotation from a firm that described itself as a finish carpentry renovation specialist for repair and touch up of damaged baseboards and drywall and painting as well as for the removal and replacement of the master bedroom carpet.

The landlord submitted some evidence of complaints that he attributed to smoking in the rental unit, but they were not relevant to any of his claims in this proceeding.

The tenant acknowledged that her dog caused some damage, that the carpet was stained and that there was some cleaning to be performed. She said that the landlord prevented her from returning in February to perform some of the necessary work.

The landlord testified that he started advertising the unit for rent as soon as he received notice from the tenant. The said that he has entered into a new tenancy agreement set to commence on April 15<sup>th</sup>.

### Analysis and conclusion

Dealing first with the security deposit, I accept the landlord's testimony and documents as having established that he did not receive a security deposit of \$1,640.00. This may have been due to inadvertence on his part in failing to deposit a cheque that the tenant gave to him in April, 2010. The landlord testified that he had the original uncashed cheque in his possession and I accept his bank statement as establishing that he received only one payment of \$1,640.00 from the tenant during the months of April and May, 2010 which was credited to the tenant as a rent payment. The landlord did not submit any documents and he did not provide any testimony to refute the tenant's evidence that she paid the landlord \$350.00 as a pet deposit on November 1, 2011. The tenant did not make a claim with respect to the pet deposit in her application, but on the evidence presented, I find, on a balance of probabilities that she paid it and I will take this finding into account in my final determination of the landlord's claim.

Based on my finding that the landlord did not receive a security deposit from the tenant, her application for payment of \$3,280.00, being double the claimed deposit is dismissed without leave to reapply.

The landlord testified that he acted to mitigate his damages by attempting to re-rent the unit, but he was unsuccessful in securing a new tenant until April; find that the tenant's failure to give proper notice was a factor in his inability to secure a tenant for March and I allow his claim for loss of revenue for March in the amount of \$1,640.00.

The tenant hired a cleaner who did some cleaning at the end of the tenancy. The tenant said that she was unable to do some cleaning behind appliances because of a back injury. The Residential Tenancy Policy Guideline with respect to landlord and tenant responsibilities for residential premises provides that:

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

Based on the guideline I find that some of the cleaning performed by the landlord was not the tenant's responsibility. I award the landlord the sum of \$175.00 for cleaning.

The landlord provided a quotation for repairs and carpet replacement. As of the date of the hearing he had not performed the quoted work. Based on the evidence I do not find that carpet replacement is required. The carpet was cleaned by the tenant and again by the landlord; it is still serviceable. I deny the landlord's claim for carpet replacement, but I award the landlord \$50.00 for diminution in value of the carpet.

I find the quotation for repair and touch up of damaged base boards and drywall patching and paint to be excessive and inflated, having regard to the evidence presented. I award the landlord the sum of \$200.00 for these repairs. The total award to the landlord is the sum of \$2,065.00. the landlord is entitled to recover the \$50.00 filing fee for his application for a total award of \$2,115.00. I order that the landlord retain the \$350.00 pet deposit that he holds in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$1,765.00. This order may be registered in the Small Claims Court 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 03, 2012.

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Residential Tenancy Branch