



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord 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.

At the beginning of the hearing, the Landlord's agent said she served the Tenant with an evidence package by leaving a copy of it with the Tenant's brother at her mother's residence. The Landlord's agent said she was advised by the Tenant's mother to send the Tenant's security deposit to this address. The Tenant said she did not receive the Landlord's evidence package. Section 88 of the Act sets out the various ways in which a party may be served with documents such as an evidence package and in particular, s. 88(e) says that it may be left *at the person's residence* with an adult who apparently resides with the party. I find that the Landlord's agent did not serve the Tenant with the evidence package at her residence. Consequently, I find that the Tenant has not been served with the Landlord's evidence as required by the Act (or at all) and it is excluded pursuant to RTB Rule of Procedure 11.5(b).

### Issue(s) to be Decided

1. Is the Landlord entitled to cleaning and repair expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on September 1, 2011 and ended on or about February 29, 2012 when the Tenant moved out. Rent was \$1,100.00 per month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy. The Parties agree that a condition inspection report was not completed at the beginning or at the end of the tenancy.

The Landlord's agent claimed that at the beginning of the tenancy the walls in the rental unit were undamaged and freshly painted but at the end of the tenancy they had many nail and tack holes from hanging pictures, the corners of the walls were dented and

scraped and the living room wall had some larger holes. The Landlord sought \$100.00 to repair these damages.

The Landlord's agent also claimed that at the beginning of the tenancy, the rental unit was cleaned with the exception of a utility room and behind a washer and dryer. The Landlord's agent said the Tenant wanted to move in early and agreed to clean those areas without compensation. The Landlord's agent argued that had the Tenant not agreed to do that cleaning, she would have done it herself prior to the Tenant moving in. The Landlord's agent claimed that at the end of the tenancy, the Tenant did not clean an oven, the area behind the stove and refrigerator and the kitchen cupboard doors. The Landlord's agent also claimed that the Tenant did not clean behind the washer and dryer. As a result, the Landlord sought \$200.00 for cleaning these areas.

The Landlord's agent further claimed that the Tenant damaged the carpeting in the rental unit by trying to remove stains with a chemical cleaner that left bleach spots. The Landlord's agent admitted that the carpeting was 18 years old at the beginning of the tenancy but argued that it was still in good condition and would not have had to be replaced except for the stains. The Landlord's agent sought \$110.00 for carpet cleaning as well as compensation for replacing the carpet.

The Tenant denied that the rental unit was cleaned at the beginning of the tenancy and claimed that the whole kitchen including the oven was dirty at the beginning of the tenancy as well as behind the washer and dryer. The Tenant said she left the kitchen clean at the end of the tenancy but admitted that she did not clean behind the stove, refrigerator or washer and dryer. The Tenant said all of these appliances (with the exception of the refrigerator) were not on rollers and it was physically impossible for her to pull them out. The Tenant denied that she agreed to clean these areas at the beginning of the tenancy and claimed that the Landlord never asked her to clean them at the end of the tenancy.

The Tenant claimed that there were already nail and tack holes in the walls at the beginning of the tenancy as well as dents and scrapes on the corners of the walls which the Landlord had just been painted over. The Tenant denied that there were large holes in the living room walls as alleged by the Landlord. The Tenant denied that she damaged the carpets and claimed that they were stained all over at the beginning of the tenancy. The Tenant said there was also a flood (from the hot water tank) in the rental unit in October of 2011 with the result that rust stains were left in the carpet and could not be removed despite cleaning the carpet twice.

The Parties agree that the Tenant left a voice mail message for the Landlord advising her of the Tenant's forwarding address to which the security deposit could be sent but she did not provide the Landlord with that address in writing. The Tenant confirmed at the hearing that her forwarding address for the security deposit is the address for service indicated on the Landlord's application for Dispute Resolution.

## Analysis

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. RTB Policy Guideline #1 defines “reasonable wear and tear” as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.” Consequently as it is the Landlord’s application, 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 damages were the result of an act or neglect of the Tenant rather than reasonable wear and tear. This also means that if the Landlord’s evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

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. The purpose of the condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages (if any) were caused by the tenant 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.

I find that there is no evidence to corroborate the Landlord’s evidence regarding the condition of the rental unit at the beginning of the tenancy (except where the Tenant’s evidence is the same). Consequently, I find that with respect to the issue of wall damage, carpet damage and most of the cleaning, it is a case of the Landlord’s word against the Tenant’s. Given the contradictory evidence of the Parties on those issues and in the absence of any additional, corroborating evidence from the Landlord (who bears the burden of proof) to resolve the contradiction, I find that there is insufficient evidence to make out a monetary claim for wall repair and carpet replacement expenses and they are dismissed without leave to reapply.

With respect to the Landlord’s claim for cleaning expenses, I also find (given the contradictory evidence of the Parties) that there is insufficient evidence to conclude that an oven and cupboard doors were not left reasonably clean. Furthermore, RTB Policy Guideline #1 (Responsibility for Residential Premises) deals with the Tenant’s responsibility for cleaning major appliances at p. 3 as follows:

*“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.”*

The Landlord claimed that many of the major appliances were on rollers however the Tenant claimed that only the refrigerator was on rollers. However, the Tenant also claimed that the area behind the refrigerator was not cleaned at the beginning of the tenancy. Given this contradictory evidence, I find that there is insufficient evidence to conclude that the Tenant was responsible for cleaning under and behind the refrigerator, stove, washer and dryer. Consequently, the Landlord's claim for cleaning expenses is dismissed without leave to reapply.

RTB Policy Guideline also states that a Tenant has a responsibility to clean carpets if the following conditions apply:

"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. 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."

Although the Tenant admitted that she had a cat during the tenancy, the Landlord provided no corroborating evidence that he incurred carpet cleaning expenses as alleged. Instead, the Landlord's evidence was that the carpets in the rental unit were replaced. Consequently, I find that there is insufficient evidence to support the Landlord's claim for carpet cleaning expenses and it is also dismissed without leave to reapply.

Sections 24(2) and 36(2) of the Act say that if a Landlord fails to complete either a move in or a move out condition inspection report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In failing to complete a move in or a move out condition inspection report, I find that the Landlord contravened s. 23 and s. 35 of the Act and therefore did not have a right to retain the Tenant's security deposit or to make a claim against it for damages to the rental unit. Consequently, the Landlord's application to keep the Tenant's security deposit is dismissed without leave to reapply.

I find that the Landlord now has confirmation of the Tenant's forwarding address in writing and accordingly I Order the Landlord pursuant to s. 38(1) of the Act to return the Tenant's security deposit of \$550.00 to her immediately.

### Conclusion

The Landlord's application is dismissed in its entirety. A Monetary Order in the amount of \$550.00 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: May 24, 2012.

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Dispute Resolution Officer