



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application filed March 29, 2012: MNSD; FF

Landlord's application filed April 2, 2012: MNSD; FF

### **Introduction**

This Hearing was scheduled to consider cross Applications. The Tenants seek a monetary order for double the amount of the security deposit, \$996.00, and to recover the cost of the filing fee from the Landlord.

The Landlord seeks to keep \$243.00 of the security deposit for damages and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Landlord entitled to retain \$243.00 from the security deposit?

### **Background and Evidence**

This tenancy began on July 1, 2011. Monthly rent was \$977.00, due in advance on the last day of each month. The Tenants paid a security deposit in the amount of \$498.500 on June 4, 2011.

The Tenant XY gave the following testimony:

The Tenant testified that he gave his notice to end the tenancy on February 2, 2012, for an effective move-out date of March 1, 2012. He stated that the Landlord told him it was insufficient notice, so he paid agreed to pay rent for the month of March, 2012, even though he would not be living there. The Tenant testified that he moved out of the rental unit on March 3, 2012.

He stated that a Condition Inspection Report was completed at the beginning of the tenancy and that on March 3, 2012, he met with agents of the Landlord to complete a

move out Condition Inspection. The Tenant testified that the Landlord's agents told him everything was good and that he would be receiving his security deposit back. The Tenant went to return the keys to the manager on March 4, 2012, but the Manager insisted on doing another inspection. The Tenant stated that the Manager told the Tenant that there was more cleaning that was required and wanted to perform another inspection on March 11, 2012. The Manager told the Tenant that he would be charged \$100.00 for carpet cleaning; \$137.00 for cleaning the drapes; and \$45.00 for general cleaning. The Tenant testified that he had already shampooed the carpets and cleaned the drapes but the Manager insisted that they be professionally done. The Tenant stated that the tenancy agreement included the costs for professional cleaning, and that the costs were higher than noted in the tenancy agreement.

The Tenant testified that he did more cleaning in the rental unit and on March 11, 2012, the Manager told him that the rental unit was very clean, so there was no need to charge \$45.00 for general cleaning, but that the Tenant would still have to pay \$100.00 for carpet cleaning and \$74.20 for cleaning the drapes. The Tenant stated that the Manager took the Tenant's forwarding address, but left the keys with the Tenant. The Tenant stated that he did not agree that the Landlord could keep any of the security deposit because he thought the Landlord was asking for an unreasonable amount for cleaning the carpets and drapes.

The Tenant testified that he sent the keys and his forwarding address in writing to the Landlord, by registered mail, on March 12, 2012.

The Tenants provided photographs of the rental unit taken at the end of the tenancy.

The Landlord's agents gave the following testimony:

The Landlord's agent MK testified that the Landlord received the Tenants' forwarding address and the keys to the rental unit on March 13, 2012, by registered mail.

The Landlord's agent MK stated that there was no formal inspection of the rental unit on March 3<sup>rd</sup> and that the first inspection took place on March 4, 2012. She stated that on the second inspection, March 11, 2012, the Tenants disputed the charges and said that they were too high. She testified that the male Tenant asked if he could arrange to have the carpets and drapes cleaned professionally and that he needed time to think about it.

The Landlord's agent MK testified that the Tenants were late giving notice to end the tenancy, so they were advised that the tenancy could not end until March 31, 2012.

She stated that she posted a notice of final inspection opportunity on the door of the rental unit for March 31, 2012, but the Tenants did not attend the inspection.

The Landlord's agent MK testified that the tenancy agreement is an old form, which shows outdated amounts for the cost of professionally cleaning the carpet and drapes. She stated that she normally crosses out the old charges, but that it was overlooked when the Tenants signed the agreement.

The Landlord seeks to retain the following amounts from the security deposit:

Cost of carpet cleaning	\$100.80
Cost of cleaning drapes	\$74.20
General cleaning of suite	<u>\$68.00</u>
Total	\$243.00

The Landlord provided a "security deposit refund" statement in evidence.

## **Analysis**

### **Regarding the Tenants' 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) at the end of the tenancy and 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.

The Landlord's agent testified that the Landlord received the Tenant's forwarding address in writing on March 13, 2012. I do not accept the Landlord's position that the tenancy did not end until March 31, 2012 for the following reasons:

- the Tenant's notice to end tenancy is clear that the Tenant is ending the tenancy at the end of February in order to move into other accommodation in March;
- the rental unit was vacant and ready for inspection on March 3, 2012;
- the Tenant returned the keys to the rental unit on March 13, 2012, which provided the Landlord with possession of the rental unit on that date.

For the above reasons, I find that the tenancy ended on March 13, 2012.

The Landlord did not provide any explanation with respect to why it did not send the Notice of Final Inspection Opportunity to the Tenants at the forwarding address provided by the Tenants.

The Landlord filed its application against the security deposit on April 2, 2012. 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 within 15 days.

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, I find that the Tenants are entitled to a monetary order for double the security deposit, in the amount of **\$996.00**.

#### Regarding the Landlord's Application

There is a clause in the tenancy agreement that provides that the Tenants must pay for professional cleaning of the carpets and window coverings at the end of the tenancy. The clause provides for an estimate of what these costs might be, but does not specify an actual cost. The clause also provides that the Tenant may have the carpets and drapes professionally cleaned and provide the Landlord with the receipt in order to avoid being charged for the cost of professional cleaning. In this case, the Tenants did not dispute that the carpets and window coverings were professionally cleaned at the beginning of the tenancy, nor did they pay to have the carpets and drapes professionally cleaned at the end of the tenancy. Therefore, I find that the Landlord is entitled to recover the reasonable cost of professionally cleaning the carpets (**\$100.80**) and drapes (**\$74.20**) from the Tenants.

Section 37 of the Act requires a tenant to leave the rental unit in a reasonably clean condition at the end of a tenancy. Based on the photographs provided by the Tenants, I find that the rental unit was left in a cleaner state than is required by the Act and that the Landlord is not entitled to further cleaning charges. This portion of the Landlord's application is dismissed.

The Landlord has established a monetary award in the amount of **\$175.00** against the Tenants, which I hereby set off against the Tenants' monetary award of **\$996.00**. I order that the parties each bear their own cost of the filing fee.

The Tenants are hereby provided a Monetary Order in the amount of **\$821.00** against the Landlord.

**Conclusion**

I hereby provide the Tenants a Monetary Order in the amount of **\$821.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 12, 2012.

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Residential Tenancy Branch