



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from information included on the Application for Dispute Resolution that the Landlord is claiming compensation for carpet cleaning and the Application for Dispute Resolution has been amended to include this claim.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for cleaning the carpet, to retain all or part of the security deposit paid by the Tenant, and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 13, 2011; that a condition inspection report was completed at the beginning of the tenancy; that the Tenant paid a security deposit of \$275.00; that the parties mutually agreed to end the tenancy on April 30, 2012; that the Tenant informed the Landlord, in writing, that she would be vacating the rental unit on April 14, 2012; that the Tenant vacated the rental unit on April 14, 2012; that the Tenant returned the keys, by mail, on April 17, 2012; and that the Tenant mailed her forwarding address to the Landlord on April 17, 2012.

The Landlord and the Tenant agree that the Tenant attempted to arrange an inspection for the date she was vacating the rental unit, which was May 14, 2012; that for a portion of the tenancy the Tenant had a cat; that she was informed that the Landlord was unavailable on May 14, 2012; that on April 12, 2012 the Agent for the Landlord gave the Tenant a letter in which she offered alternative inspection dates on April 17, April 18, or April 19; that on April 23, 2012 the Landlord mailed a Notice of Final Opportunity to Schedule a Condition Inspection to the Tenant, in which the Landlord informed the Tenant the unit was to be inspected on April 30, 2012; that the Tenant did not attend any of the proposed inspection dates; and that the Agent for the Landlord inspected the rental unit on April 30, 2012.

The Landlord is seeking authorization to retain the security deposit, pursuant to section 36(1) of the *Act*, as the Tenant did not participate in a final inspection of the rental unit. The male Landlord stated that he did arrive at the rental unit at 5 p.m. or 6 p.m. on April 14, 2012 but he could not schedule an inspection on that date because he lives in Dawson Creek and did not know when he would arrive in Kamloops. The Agent for the Landlord, who is responsible for managing the unit, was out of town on April 14, 2012.

The Tenant stated that she moved from Kamloops to Invermere on April 14, 2012 and could not, therefore, attend on any of the proposed inspection dates. She stated that she knows nobody in Kamloops who could represent her at an inspection.

The Landlord is seeking compensation, in the amount of \$40.00, to clean the carpet in the bedroom used by the Tenant. The Agent for the Landlord stated that the carpet in the bedroom needed cleaning, in part because the Tenant wore shoes in the bedroom, and she recorded the need to clean the carpet on the Condition Inspection Report she completed on April 30, 2012.

The Tenant stated that she vacuumed the carpet but did not shampoo it at the end of the tenancy. The Tenant submitted photographs of the carpet in which the carpet appears clean.

The male Landlord stated that the photographs of the carpet are not an accurate representation of the carpet at the end of the tenancy. The Landlord did not submit a receipt to show that it cost \$40.00 to clean the carpet.

### Analysis

Section 44 of the *Residential Tenancy Act (Act)* outlines a variety of ways in which a tenancy can end.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. The undisputed evidence is that the parties did mutually agree to end the tenancy on April 30, 2012.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. The undisputed evidence is that the Tenant vacated the rental unit on April 14, 2012. As the tenancy was first ended pursuant to section 44(1)(d) of the *Act*, I find that this tenancy ended on April 14, 2012.

Section 35(2) of the *Act* requires a landlord to offer at least two opportunities for a final inspection of the rental unit. The undisputed evidence is that the Landlord offered this Tenant four different dates for the final inspection and that she was given a Notice of Final Opportunity to Schedule a Condition Inspection that specified the fourth date. I find, therefore, that the Landlord complied with section 35(2) of the *Act*.

Section 36(1) of the *Act* stipulates that a tenant's right to the return of the security deposit is extinguished if the landlord complied with section 35(2) of the *Act* and the tenant has not participated on either occasion. As the Tenant did not participate in an inspection of any of the four dates offered by the Landlord, I find that the Tenant extinguished her right to the return of the security deposit.

I do not find it unreasonable for the Landlord to decline the inspection date offered by the Tenant, given that the Tenant was vacating the rental unit prior to the mutually agreed end date for the tenancy; the Agent for the Landlord who is responsible of managing the unit was out of town; and the Landlord, who resides in a distant community, was not certain when he would be arriving in town on that date. To provide both parties with a fair opportunity to participate in the inspection, both parties must demonstrate some degree of flexibility when scheduling an inspection and I do not find that the sole date offered by the Tenant demonstrates such flexibility.

While I accept that the Tenant's personal circumstances made it difficult, if not impossible, for her to personally attend on any of the dates proposed by the Landlord, I find that she had an obligation to be represented at one of the proposed dates, even if she had to pay an agent to represent her at the inspection.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

After hearing the contradictory testimony and reviewing the evidence before me, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the carpet at the end of the tenancy. In determining that the carpets required cleaning I was influenced, in part, by the Tenant's acknowledgement that the carpets were not shampooed, in part, by the undisputed evidence that the tenancy lasted for approximately 8 months, and, in part, by the undisputed evidence that the Tenant had a cat, which tends to contribute to the need to clean the carpet.

Section 21 of the Residential Tenancy Regulation specifies that a condition inspection report that is completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit unless the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report declared that the carpet in the bedroom needed cleaning, I accepted that this is proof that the carpet needed cleaning.

In determining that the inspection report is proof that the bedroom carpet needed cleaning, I determined that the Tenant's photographs did not constitute a preponderance of evidence to the contrary of the report. In reaching this conclusion I was influenced by the fact that the photographs do not depict the entire carpet and that dirty areas of the carpet could simply have not been captured by the photographs and by the fact that it is often difficult to capture stains on carpets.

In addition to establishing that the rental unit required cleaning, a landlord must also establish the cost of cleaning whenever compensation for cleaning is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the carpet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that it cost \$40.00 to clean the carpet. On this basis, I dismiss the Landlord's claim for compensation for cleaning the carpet.

### Conclusion

As the Tenant extinguished her right to the return of the security deposit, I find that the Landlord has the right to retain the Tenant's security deposit, pursuant to sections 36(1) and 38(2) of the *Act*.

As the Landlord was not obligated to file an Application for Dispute Resolution to retain the security deposit, pursuant to section 38(2) of the *Act*, and the Landlord has failed to establish that it has a monetary claim, I dismiss the Landlord's application to recover the filing fee from the Tenant.

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: July 03, 2012.

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Residential Tenancy Branch