



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenants' security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed at the outset of the hearing. The landlord's evidence was not timely submitted under the Residential Tenancy Branch Rules of Procedure as it was not received at least 5 business days prior to the hearing, although her application was filed on June 18, 2012. Tenant NP said that she had not received the evidence, although she moved recently. Tenant LH confirmed she had received the evidence.

The tenant's evidence was not served upon the landlord. Although I have excluded all documentary evidence due to the failure of the parties to properly serve the documents in the time and manner as required by the Rules, I find the evidence was not critical to making my Decision.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence and make submissions to me.

Only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to her monetary claim and to recover the filing fee?

### Background and Evidence

I heard undisputed testimony that this tenancy began on September 15, 2010, ended on May 31, 2012, monthly rent was \$2000.00 and the tenants paid a security deposit of \$1000.00 on September 4, 2010.

The parties agree that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Branch Regulations.

The landlord has not returned any portion of the tenants' security deposit.

The landlord confirmed having received the tenants' written forwarding address via email on June 14, 2012, and acted upon it by filing an application for dispute resolution on June 18, 2012. When questioned, the landlord confirmed that during the tenancy, she and the tenants communicated about matters involving the tenancy primarily through text messages and secondarily through email as shown by the evidence.

The landlord's monetary claim is in the amount of \$406.36, comprised of a general cleaning of the rental unit at the end of the tenancy in the amount of \$381.36 and a parking pass for \$25.00.

The landlord said the tenants left the rental unit dirty and unclean, which required the landlord to hire a cleaning company to perform a general cleaning of the rental unit.

Additionally the landlord said that the tenants failed to return a parking pass and that they should pay the landlord \$25.00.

When questioned, the landlord said that there is no receipt for replacement of a parking pass as the landlord has not purchased one.

The tenants, in response, said that they took off several days from work prior to moving out in order to clean the rental unit. In support, the tenants provided photos of the rental unit.

The tenants said that the rental unit was left much cleaner than when the tenancy started, particularly noting that the carpet wasn't clean when they moved in. However, the tenants said that the carpet was steam cleaned at the end of the tenancy and was cleaner than when they moved in. In support, the tenants provided an invoice showing rental of carpet steam cleaning equipment.

The tenants said there were no offers to inspect the rental unit at move-in or move-out.

The tenants denied receiving a parking pass.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, upon a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement,

**third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I find the landlord submitted insufficient evidence that the tenants left the rental unit in a state which required cleaning.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

I therefore dismiss her claim of \$350 for cleaning, without leave to reapply.

Even had I not dismissed the landlord's application for failure to provide condition inspection reports, I would still make the claim to dismiss the application as I found the tenants' evidence of a clean rental unit and steam cleaned carpet convincing.

As to the parking pass, I find the landlord failed to meet step 3 of her burden of proof, as there was no proof of a loss.

Due to the above, I dismiss the landlord's claim for \$406.36, without leave to reapply.

As I have dismissed the landlord's claim, I also dismiss her request for recovery of the filing fee.

I next considered the matter of the tenants' security deposit.

Under the Act, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address.

In the case before me, the tenants communicated their forwarding address in an email transmission. I accept that this and other methods of electronic communication were

the preferred method of communication between the parties, as confirmed by the landlord and the evidence.

Although the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' forwarding address through the June 14, 2012 email to the landlord, with the landlord's response, sufficiently served, pursuant to section 71 of the Act.

I therefore find the landlord received the tenants' forwarding address on June 14, 2012, and did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenants' security deposit within 15 days of having received the tenants' written forwarding address, section 38 of the Act requires that the landlord pay the tenants double the amount of their security deposit of \$1000.00.

#### Conclusion

I therefore find the tenants are entitled to a monetary order in the amount of \$2000.00, comprised of their security deposit of \$1000.00, doubled.

I grant the tenants a final, legally binding monetary order in the amount of \$2000.00, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: August 24, 2012.

---

Residential Tenancy Branch