



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in payment of those amounts.

### Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for general cleaning and carpet cleaning expenses?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit and if so, how much?

### Background and Evidence

This tenancy started on April 20, 2011 and ended on June 20, 2012 when the Tenant moved out. Rent was \$675.00 per month payable in advance on the last day of the preceding month. The Tenant paid a security deposit and a pet damage deposit of \$325.00 each. The Parties completed a condition inspection report at the beginning of the tenancy. The Parties did a move out inspection at the end of the tenancy during which the Landlord made a written list of deficiencies but did not complete a move out condition inspection report. The Tenant gave the Landlord her forwarding address in writing during the move out inspection on June 20, 2012.

The Parties agree that the Tenant paid only \$375.00 of her rent for June 2012 and gave the Landlord written authorization at the end of the tenancy to deduct \$300.00 from her security deposit. The Landlord claims that the Tenant did not have the carpets professionally cleaned at the end of the tenancy as is required under the tenancy agreement. The Tenant argued that she should not be required to compensate the Landlord for carpet cleaning expenses because she was willing and able to steam clean them herself at the end of the tenancy. The Landlord also claimed that 2 hours of additional cleaning was required to clean the oven, stove top, stove hood fan, windows, light covers, blinds and behind the refrigerator. The Tenant argued that she could not remove some of the windows to clean the back of the inside pane of glass and the front side of the second pane of glass and that the living room windows were too large for her to remove herself.

## Analysis

Section 37 of the Act says at the end of the tenancy, a tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 at p. 2 says that a tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy where she has had pets or smoked.

The addendum to the Parties' tenancy agreement contains a term that states, "carpets to be professionally cleaned by truck Mounted Machine." I find that this term of the tenancy agreement contravenes s. 32(2) and (3) and s. 37 of the Act which places the responsibility on the Tenant to maintain cleanliness standards during the tenancy and at the end. I find that this term also contravenes s. 7(2) of the Act which requires a party to mitigate their damages by, for example, allowing a tenant to first exercise their obligations under the Act and thereby minimize any costs to them. In other words, it is only after the Tenant has failed to leave the carpets reasonably clean (after attempting to clean them themselves) that the Landlord is entitled to have them professionally cleaned. In failing to give the Tenant an opportunity to clean the carpets at the end of the tenancy, I find that the Landlord failed to mitigate his damages and for this reason his claim for carpet cleaning expenses is dismissed without leave to reapply.

I find that the Landlord is entitled to compensation of \$24.00 for general cleaning expenses as there is no dispute that the oven, light covers, blinds and some of the windows were not cleaned at the end of the tenancy. Although I find that the Tenant was not responsible for removing large windows in the living room to clean the inside pane, I also find that the Landlord's claim for cleaning expenses is conservative and I award him the full amount claimed. As the Landlord has had limited success in this matter, I find that he is entitled to recover from the Tenant one-half of the filing fee from the Tenant or \$25.00. Consequently, I find that the Landlord is entitled to a total monetary award of \$49.00.

Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the Tenant moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit and pet deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not offset those damages from the security deposit and pet deposit.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit

then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on June 20, 2012 and that the Landlord received the Tenant's forwarding address in writing the same day. I also find that the Landlord had the Tenant's written authorization to keep \$300.00 of the Tenant's security deposit in payment of June's rent but did not have her written authorization to keep the balance of it or the pet deposit. Although the Landlord made an application for dispute resolution to make a claim against the Tenant's deposits for cleaning expenses within the time limits required under s. 38(1) of the Act, I find that his right to do so was extinguished under s. 36(2) of the Act because he did not complete a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the balance of the security deposit (\$50.00) and double the pet damage deposit (\$650.00) to the Tenant.

I Order the Landlord pursuant to s. 72(2) of the Act to keep \$49.00 of the Tenant's security deposit (in addition to the \$300.00 for unpaid rent) in full satisfaction of his monetary award and to return the balance owing as follows to the Tenant:

Security deposit – authorized deduction: (for unpaid rent for June 2012)	\$325.00 - \$300.00= \$25.00
Double balance of unreturned security deposit:	\$25.00 x 2 = \$50.00
Double unreturned pet damage deposit:	\$325.00 x 2 = <u>\$650.00</u>
Subtotal:	\$700.00
<b>Less:</b> Cleaning expenses:	\$24.00
Filing fee:	<u>\$25.00</u>
Balance owing:	\$651.00

### Conclusion

The Landlord's application is granted in part. A Monetary Order in the amount of \$651.00 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: September 17, 2012.

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Residential Tenancy Branch