



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

On September 21, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit/pet damage deposit; and to recover the fee for filing this Application for Dispute Resolution. As the Landlord has since returned the full amount of the security/pet damage deposit, I have amended the application to include a claim for a monetary Order for damage to the rental unit.

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 stated that he submitted documents and photographs 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 parties were advised that I did not have copies of the Landlord's evidence at the time of the hearing. The evidence was discussed during the proceedings and the Landlord was given the opportunity to fax the evidence to the Residential Tenancy Branch at the end of the hearing. The evidence was received on December 12, 2012 and was viewed prior to rendering this decision.

The Tenant submitted no evidence prior to the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit 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 the Tenant lived in this rental unit prior to the Landlord purchasing the property; that the Landlord purchased the property at the end of February of 2012; that this Landlord and the Tenant entered into a new tenancy agreement that began on March 01, 2012; that the Tenant paid a security deposit of \$687.50 to the previous landlord on July 09, 2009; that the Tenant paid a pet damage

deposit of \$687.50 to the previous landlord on July 09, 2009; that the security deposit and pet damage deposit were transferred to this Landlord by the previous landlord; that this tenancy ended on July 31, 2012; that the Tenant provided the Landlord with a forwarding address, via email, on August 08, 2012; that a condition inspection report was not completed at the beginning or the end of the tenancy; that the Landlord did not have written authorization to retain any portion of the security deposit; that the Landlord returned \$1,077.92 of the security/pet damage deposit to the Tenant on August 14, 2012; and that the Landlord returned another \$339.60 to the Tenant on September 21, 2012.

The Landlord is seeking compensation, in the amount of \$159.60, for cleaning the carpet in the rental unit. The Landlord stated that the carpet was not steam cleaned or shampooed at the end of the tenancy; the carpet was stained; and the carpet smelled of cats. The Tenant stated that the stains on the carpet in the bedroom were present at the start of the tenancy; that a used carpet, which was stained, was installed in the living room in 2011; that the carpets were regularly vacuumed; that the carpets were not steam cleaned or shampooed at the end of the tenancy; that the carpets were cleaned on one occasion approximately one year after she moved into the rental unit; and that she does not believe the carpets needed cleaning at the end of the tenancy.

The Landlord and the Tenant agree that the Landlord served the Tenant with a copy of a receipt for carpet cleaning, in the amount of \$159.60.

The Landlord is seeking compensation, in the amount of \$90.00, for cleaning the rental unit. The Landlord stated that the windows in the rental unit needed cleaning, the bathroom needed cleaning, some doors needed cleaning, the kitchen cupboards needed cleaning, there were large cobwebs in various areas of the rental unit, and that the walls needed to be cleaned and washed. The Tenant agrees that there were some cobwebs in the rental unit and that the cupboards needed cleaning. The Tenant argued that the kitchen sink was leaking so she should not be responsible for cleaning the cupboard under the sink and that the paint was flaking off the cupboards so she should not be required to clean the cupboards. The Landlord and the Tenant agree that the photographs of the rental unit are an accurate representation of the rental unit at the end of the tenancy.

The Landlord stated that he did not serve the Tenant with a copy of a receipt that shows he paid to have the rental unit cleaned.

### Analysis

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.

Section 37(2) of the *Residential Tenancy Act (Act)* requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy. Residential Tenancy Branch Policy Guidelines suggest that a tenant will generally be responsible for steam cleaning or shampooing the carpets after a tenancy of one year and that a tenancy may be expected to steam clean or shampoo a carpet at the end of a tenancy, regardless of the length of the tenancy, if the tenant has a pet that is not caged. I concur with these guidelines. As more than one year has passed since the Tenant last steam cleaned or shampooed the carpet and the Tenant had a cat, I find that she should have steam cleaned or shampooed the carpet at the end of the tenancy. I therefore find that the Tenant owes the Landlord \$159.60 for cleaning the carpet, as per the invoice served to the Tenant.

On the basis of the testimony and the photographs submitted in evidence, I find that the rental unit required additional cleaning at the end of the tenancy. While I agree that the Tenant was not obligated to clean the area under the sink that was impacted by the leaking sink or paint that flaked from the kitchen cupboards, I find that she was obligated to remove all the cobwebs in the rental unit; to remove food crumbs from the cupboard; and to remove personal property from the cupboard below the sink.

In addition to establishing that the rental unit required additional cleaning, a landlord must also accurately establish the cost of the cleaning whenever compensation is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the rental unit. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the claim that the Landlord paid \$90.00 for cleaning. On this basis, I am only able to award nominal damages for cleaning, in the amount of \$1.00. This award is intended to demonstrate that the Tenant failed to comply with her obligation to leave the rental unit in reasonably clean condition and is not intended to compensate the Landlord for the cost of cleaning the unit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

I find that the Landlord refunded the full pet damage deposit of \$687.50 and \$390.42 of the security deposit on August 14, 2012. I therefore find that the Landlord complied with section 38(1) of the *Act* in regards to the return of the pet damage deposit.

I find that the Landlord failed to comply with section 38(1) of the *Act* in regards to the security deposit, as the Landlord did not fully repay the security deposit or file an Application for Dispute Resolution within fifteen days of the tenancy ending on July 31, 2012 and within fifteen days of the date he received the Tenant's forwarding address, via email, on August 08, 2012.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security

deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act* in regards to the security deposit, I find that the Landlord must pay the Tenant double the security deposit that was paid, which is \$1,375.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$210.60, which is comprised of \$159.60 for cleaning the carpets, nominal damages of \$1.00, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Tenant has established a monetary claim, in the amount of \$1,375.00, which is comprised of double the security deposit.

After offsetting the two claims, I find that the Landlord owes the Tenant \$1,164.40. I find that this debt must be further reduced by the remaining \$390.42 that was returned to the Tenant on August 14, 2012 and the \$339.60 that was returned on September 21, 2012.

Based on these determinations I grant the Tenant a monetary Order for the amount \$434.38. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: December 12, 2012.

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Residential Tenancy Branch