



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

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 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.

With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the Tenant's surname, which she provided at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to retain any portion of the security deposit paid by the Tenant?

### Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement for which the Tenant was obligated to pay monthly rent of \$550.00. The Tenant stated that

she believes the tenancy began on August 31, 2012 or September 01, 2012. The Landlord cannot recall when the tenancy began but he does not dispute the Tenant's testimony. The parties agree that the Tenant paid a security deposit of \$275.00, none of which has been returned; that the tenancy ended on April 30, 2013; that a condition inspection report was not completed at the start or the end of the tenancy; and that the Tenant provided the Landlord with her forwarding address, via registered mail, in May of 2013.

The Landlord and the Tenant agree that the Landlord entered into a separate tenancy agreement with a third party, who shared common areas in the residential complex with the Tenant; that the third party paid rent to the Landlord; that the third party moved into the rental unit in January of 2013; that the third party owned a cat which lived in the rental unit; and that the cat damaged furniture in the rental unit, which was owned by the Landlord. The Landlord stated that the third party also paid a security deposit which has been retained as partial compensation for the damaged furniture.

The Landlord is seeking compensation, in the amount of \$275.00, in partial compensation for the damage caused by the cat. He contends that the Tenant had an obligation to inform him that the cat was damaging the furniture.

The Tenant stated that she discussed the damage with the cat owner as soon as she noticed it; that the cat owner told her the Landlord's daughter had been informed of the damage; that the cat owner covered the furniture to prevent further damage; and that the cat did not cause further damage after the couch was covered.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord had one tenancy agreement with the Tenant and later entered into a separate tenancy agreement with a third party, who kept a cat in the rental unit. The Tenant and the third party paid rent independently of each other and they each paid a security deposit to the Landlord. I therefore find that the Tenant and the third party were tenants in common. They each have their own tenancy and they were not responsible for debts or damages relating to the other party's tenancy.

Section 32 of the *Act* requires tenants to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. As the Tenant did not own the cat nor did she permit it to reside in the rental unit, I find that she is not obligated to repair any damage caused by the cat. I therefore dismiss the Landlord's claim for compensation for damage to the furniture. The Landlord retains the right to seek compensation from the third party for damage caused by the cat.

In the absence of evidence to the contrary, I accept the Tenant's testimony that when she noticed the damage to the furniture she brought it to the attention of the third party

and that the third party took action to protect the furniture. I find that the Tenant acted reasonably upon noticing the damage and, given that the furniture appeared to be protected with a cover, she did not have an obligation to report the damage to the Landlord. In making this finding I specifically note that there is nothing in the *Act* that requires a tenant to protect the Landlord's property from the actions or neglect of anyone other than the Tenant or a person/pet the Tenant has permitted on the property.

Section 24(2)(c) of the *Act* stipulates that the landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not complete a condition inspection report at the start of the tenancy and provide a copy of the report to the tenant. On the basis of the undisputed evidence, I find that the Landlord did not complete a condition inspection report at the start of the tenancy and that the Landlord's right to claim against the security deposit and pet damage deposit for damage has, therefore, been extinguished.

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. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 24(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit 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. As the Landlord has not yet returned the security deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), 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(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

I find that the Landlord's application has been without merit and I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I grant the Tenant a monetary Order for \$550.00, which is double the security deposit. 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: August 14, 2013

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Residential Tenancy Branch

