



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MNR, MND, MNDC, FF  
For the tenant: MNSD, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit and unpaid rent, and for recovery of the filing fee.

The tenants applied for a return of their security deposit and pet damage deposit, doubled, other deposits, and for recovery of the filing fee.

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

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue-* At the outset of the hearing, the landlord acknowledged that they sent their documentary evidence, which were photographs, in an email attachment. The tenant said that she was unable to open the emailed attachment.

Email transmission is not an acceptable method of delivery of documents under section 88 of the Act, and in light of the tenant’s statement that she was unable to open the attachment, I have excluded the landlord’s photographic evidence from consideration as the landlord was required to serve a duplicate copy of all evidence to the other party, the tenant in this case, as she did to the Residential Tenancy Branch (“RTB”).

The tenant said that she did not serve evidence in support of their application for dispute resolution.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?
2. Are the tenants entitled to a return of their security deposit and pet damage deposit, doubled, and to recover the filing fee?

Background and Evidence

Although the landlord said that the parties had a written tenancy agreement, neither party provided one into evidence. The landlord stated that the tenancy began approximately 2 ½ years ago and the tenant said that the tenancy started on June 30, 2011; the landlord said monthly rent was \$1450 and the tenant said that monthly rent was \$1400, as she was reading her tenancy agreement at the hearing.

Both parties agree that the tenant paid a security deposit of \$700 at the beginning of the tenancy. The tenant said that she paid a pet damage deposit of \$50, and the landlord did not dispute this submission.

The tenant said that she paid a \$250 deposit on the two key fobs, and that none of the deposits have been returned to her.

The parties agreed that there was no move-in or move-out inspection and therefore no condition inspection reports as required of the landlord by the Residential Tenancy Act

*Landlords' application-*

The landlord's monetary claim listed on his application for dispute resolution was \$3190.50, without providing a detailed calculation as to the breakdown of that request as required in their application and under the Act. In response to my question, the landlord said his claim was comprised of the May 2013 rent of \$1400, replacement of the bedroom carpet for "about" \$560, painting of the rental unit for "about" \$600, cleaning for "about" \$400, and miscellaneous expenses.

*Loss of rent revenue for May 2013-*

In support of their application the landlord testified that on April 22, he received a text message from the female tenant stating that they were moving out on May 1, 2013, and thereafter, the tenants refused the landlord access to show the rental unit.

The landlord indicated that he received the written notice on April 25 that the tenants were vacating, and due to the insufficient notice, the landlord was unable to find a new tenant for May, causing a loss of rent revenue.

In response the tenant submitted that they gave the landlord verbal notice on April 1, 2013, that they were vacating the rental unit on May 1, 2013, and therefore the landlord had plenty of notice to find a new tenant.

*Carpet replacement-*

As to the carpet replacement, the landlord said that they were unable to clean the carpet and therefore a replacement will be necessary.

In response, the tenant said that the carpet was dirty when they moved in, and that they had to clean the carpet and the entire house when they moved in.

*Painting-*

The landlord said that it was necessary to repaint the rental unit after the tenancy ended, due to the condition left by the tenants.

In response, the tenant said that the rental unit was not livable at the beginning of the tenancy, requiring the tenants to clean the entire rental unit at the beginning of the tenancy.

*Cleaning-*

As to the request for compensation for the cleaning of the rental unit, the landlord classified the rental unit as "nasty" at the end of the tenancy, which required them to have the rental unit clean.

In response, the tenant said that the dishwasher and garbage disposal were broken and that the landlord never made repairs. Additionally, the tenant said the rental unit was left in a state of reasonable cleanliness and that the condition was taking reasonable wear and tear into account.

*Tenants' application-*

The tenants' monetary claim is in the amount of \$2075, which she listed as her deposits of \$1000, doubled, and \$75 for fob repair as they have been wrongfully withheld from by the landlord.

The deposits include \$700 for the security deposit, \$50 for the pet damage deposit, and \$250 for the fob deposits.

In support of her application, the tenant said that they gave the landlord their written forwarding address on a piece of paper in May, when the landlord came to collect the key fobs.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties 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.

#### *Landlord's application-*

##### *Loss of rent revenue-*

As to the issue of loss of revenue, Section 45 (1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy.

In the case before me, I find the landlords submitted sufficient, undisputed evidence that the tenant failed to give a written notice that they were vacating until April 25, 2013, and that the said insufficient notice caused the landlords to suffer a loss of rent revenue for the month of May 2013. I therefore find the landlords are entitled to a monetary award of \$1400.

##### *Carpet replacement, painting, and cleaning-*

A key component in establishing a claim for damage or cleaning 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 landlords have failed to meet their obligation under of the Act of conducting inspections and completing the inspection reports. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to the tenancy, I do not accept the landlords' claim for carpet replacement, and cleaning and painting of the rental unit. The landlord has the burden

of proof on the balance of probabilities and I find the landlords' evidence, or rather lack of evidence, does not meet the burden of proof.

Additionally, under section 37 of the Act, the tenants were required to leave the rental unit reasonably clean, and I find the landlord submitted insufficient evidence that the tenants left the rental unit in a state which required cleaning.

I also find that the landlord failed to submit proof that they have incurred a loss as they failed to provide any receipts, invoices, other proofs of payment, or likewise, which is the third step of their burden of proof.

Due to the above, I therefore dismiss the landlords' application for these claimed expenses, without leave to reapply.

*Tenants' application-*

When a landlord fails to offer opportunities to inspect the rental unit both at the beginning and end of the tenancy and properly complete a condition inspection report, pursuant to sections 24 and 35 of the Act, the landlord's claim against the security deposit for damage to the property or pet damage deposit for pet damage to the rental unit is extinguished under section 36 of the Act. In this case, the landlord applied to keep the security deposit and pet damage deposit in partial compensation of monetary claims for damages to the property and damage caused by the pet as well as for lost revenue for May 2013.

As the landlords' monetary claim was not only for damage to the property but also for unpaid rent, I find that the landlord complied with the requirement under section 38 and Residential Tenancy Branch Policy Guideline 17 (9) to make an application within 15 days of receiving the tenants' written forwarding address to keep the deposits. The tenants are therefore not entitled to double recovery of the security deposit and pet damage deposit, and I dismiss that portion of the tenants' application.

I find that the tenants are entitled to a return of their fob deposit of \$350, but there is no provision under the Act that I may double this amount.

I also find the tenants submitted insufficient evidence that they incurred a cost for fob repair, or that the landlord was responsible for breakage. I therefore dismiss their claim for fob repair of \$75.

As the landlords' monetary award exceeds the amount of the deposits held by the landlord, I do not order the landlord to return these amounts.

*Both applications-*

I find both applications contained merit and I therefore do not award either party recovery of the filing fee.

As I have found that the landlords are entitled to a monetary award of \$1400 for loss of rent revenue for May 2013, I direct that the landlords retain the tenants' security deposit of \$700, the tenants' pet damage deposit of \$50, and the key fob deposit of \$250, for a total of \$1000 in deposits in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$400, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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 19, 2013

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Residential Tenancy Branch

