



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 15, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence which indicates the parties entered into a fixed term tenancy agreement that began on August 1, 2007 and switched to a month to month tenancy after July 31, 2008. Rent began at \$700.00 and was subsequently raised to \$785.00 and was payable on the first of each month. On June 30, 2007 the Tenant paid \$350.00 as the security deposit. The move in condition inspection was completed on August 1, 2007 and the move out inspection was completed on July 31, 2013.

The Tenant's Witness (hereinafter referred to as the Witness) testified that he has been a professional cleaner for nine years cleaning carpets and completing move out

cleaning in several buildings in town. He stated that the Tenant had originally planned to move out on November 30, 2012, and she had hired him to complete her move out cleaning. On November 23, 2012 the Tenant suffered a stroke and as a result she had defecated on the floor. She was taken to hospital and her daughter had made arrangements to fly out from back east to assist her and aid in the cleaning of her apartment.

The Witness argued that the Landlord entered the Tenant's suite, without permission, and hired a remediation company to clean the apartment without permission. The Landlord is attempting to collect an exorbitant cleaning cost of \$252.00 from the Tenant when they had no right to have the cleaning done. The Witness stated that he and the Tenant's daughter cleaned that entire apartment and washed everything, including all the walls because the Tenant had previously been a smoker.

The Witness affirmed that he cleaned the carpets just prior to the Tenant moving out. He said the Landlord demanded that he return two weeks later to clean the carpets because they did not want them cleaned until they had painted the unit. He argued that it was not the Tenant's responsibility to pay to clean paint off of carpets once they moved out so they did the cleaning prior to the move out as required.

The Landlord asked the Witness to clarify which buildings he does work for as she thought he had indicated that he did work at buildings they manage. Once he clarified the building names she stated that he does not work any of their buildings .

The Landlord testified that the Tenant ended the tenancy effective July 31, 2013. Both parties attended the move out inspection; however, the Tenant refused to sign the report because she did not agree to deductions from her security deposit. The Landlord argued that the Tenant did not provide a receipt to prove she had the carpets professionally cleaned. She argued that it was their right as a landlord to request that any work be performed before the carpets are cleaned and questioned why they would authorize carpet cleaning just before they were going to paint. Therefore, they are seeking \$84.00 for carpet cleaning costs which they incurred after the Tenant had vacated and after they painted. She confirmed that she did not request a copy of the carpet cleaning receipt.

The Landlord stated that she did not have firsthand knowledge of what transpired in November 2012. She does not know if the resident manager had permission to enter the Tenant's unit to schedule the cleaning and she does not know if he spoke to the Tenant or her family about arranging that cleaning. She pointed to her evidence which included an invoice dated November 30, 2012 and said she could not provide a date of when the work was performed. She argued that as a landlord they have the right to determine what work needs to be done as they needed to protect the other tenants. She indicated that she did not know how to verbalize this situation and pointed to the pictures in their evidence which show feces on the floor and carpet. She argued that the Tenant has been responsible for this since they first attempted to collect it from her and noted that it has been applied to her tenant ledger since December 2012.

In closing the Tenant question why her Witness was able to clean her carpets when the hot water tank broke, with no issues from the Landlord, yet there are concerns about him cleaning at the end of the tenancy. She noted that the Landlord attempted to collect this bill only once and after she contacted the *Residential Tenancy Branch* and confirmed they had no right to enter her suite they did not attempt to collect it again until now.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Upon review of the evidence before me, and in regards to the Landlord's claim for remediation cleaning of \$252.00, I find the Landlord provided insufficient evidence to prove the Tenant breached the Act. There is however, evidence which proves the Landlord breached the Act by entering the Tenant's apartment, without proper notice. The Landlord made a conscious decision to incur a cost to clean the unit. There is no evidence before me that would indicate the Tenant authorized such cleaning or evidence to indicate the Tenant agreed to pay for such services. Rather, the evidence proves the Tenant had made other arrangements to have the unit cleaned in a reasonable amount of time. The Landlord attempted to collect payment in December 2012 and then did nothing to minimize their loss until seven months later when the Tenant decided to end the tenancy.

Based on the above, I find there to be insufficient evidence to meet all four criteria to meet the test for damages. Accordingly, I dismiss the Landlords claim for remediation cleaning, without leave to reapply.

Section 37(2) of the Act provides that ***when a tenant vacates a rental unit*** the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant complied with Section 37(2) of the Act by having her Witness clean the carpets just prior to the end of her tenancy. There is no provision in the Act that stipulates a tenant must return weeks after the end of the tenancy to clean up after the landlord paints or renovates a unit. I accept the Witness' submission that he cleaned the unit and carpets as required under the Act. Accordingly, I dismiss the Landlord's claim for carpet cleaning, without leave to reapply.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee and hereby Order the Landlord to return the Tenant's security deposit of \$350.00 plus interest of \$7.95 to the Tenant forthwith.

### Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$357.95** (\$350.00 + \$7.95). In the event that the Landlord does not comply with my Order to return the security deposit and interest forthwith, this Order must be served upon the Landlord. The Order may be 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: November 22, 2013

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Residential Tenancy Branch

