



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: MND MNR MNSD 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 tenant applied for the return of all or part of her security deposit, and to recover her filing fee. The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the tenant’s security deposit, and to recover the filing fee.

The landlord and the tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the parties confirmed that they received the evidence package from the other party and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were served in accordance with the *Act*. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

During the hearing, the landlord requested to reduce their monetary claim from \$480.00 to \$443.86. I find that such a reduction in the landlord’s claim does not prejudice the tenant and have permitted the reduction in the landlord’s claim as a result.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. According to the tenancy agreement submitted in evidence, a fixed term tenancy agreement began on May 1, 2012 and was scheduled to end on October 30, 2012. The parties agreed that the tenant did not vacate the rental unit until July 31, 2013. Monthly rent in the amount of \$900.00 was due on the first day of each month. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The tenant has claimed for the return of double her security deposit, less the amount of the hydro bill which she confirms that she owes the landlord, of \$178.41. In addition, the tenant has applied for the recovery of her filing fee.

The landlord has claimed a total of \$443.86 comprised of the following:

Item 1. Unpaid hydro bill	\$178.41
Item 2. Carpet cleaning	\$135.45
Item 3. Labour to clean rental unit	\$130.00
<b>TOTAL</b>	<b>\$443.86</b>

Settlement Agreement

During the hearing, the parties mutually agreed to settle on items 1 and 2 above in the following amounts:

<b>Description of item resolved by way of a mutually settled agreement</b>	<b>Amount agreed upon by parties</b>
Item 1. Unpaid hydro bill	\$178.41
Item 2. Carpet cleaning	\$135.45
<b>TOTAL</b>	<b>\$313.86</b>

Based on the above, items 1 and 2 will not be analyzed further in this Decision. The agreed upon amount owing by the tenant to the landlord of \$313.86 as noted above, will be discussed later in this Decision.

*Evidence related to Landlord's claim*

Regarding item 3, the landlord alleged that the tenant failed to clean the rental unit and that the landlord spent ten hours at \$13.00 per hour, to clean the rental unit. The landlord is seeking compensation from the tenant in the amount of \$130.00. The landlord referred to the outgoing condition inspection report submitted in evidence. The tenant disputed having received a copy of the condition inspection report until receiving the landlord's evidence package, and alleged that some checkmarks which represent the code "Good" on the condition inspection report, were changed by the landlord to "F", which is the code for "Fair". The landlord confirmed during the hearing that there is nothing listed on the outgoing condition inspection report that indicated the rental unit required suite cleaning. Almost every item on the outgoing condition inspection report is marked with the code "Good" to indicate good condition at the end of the tenancy.

The landlord provided a photo of the carpet, however, the parties have already agreed on the tenant paying the carpet cleaning costs by way of a mutually settled agreement. The landlord confirmed that he did not submit any other photos to support this portion of this claim. The landlord also confirmed that the tenant did clean the washer and dryer, which is why that portion of the condition inspection report was crossed off by the landlord.

The landlord referred to a previous Decision dated November 8, 2013, the file number of which has been included on the cover page of this Decision for ease of reference. In that Decision, the landlord's application to retain the tenant's security deposit was dismissed with leave to reapply, however, the Arbitrator wrote "...Leave to reapply is not an extension of any applicable time limitation deadlines...".

*Evidence related to Tenant's claim*

The parties agreed that the tenant surrendered the amounts for carpet cleaning and unpaid hydro costs, for a total of \$313.86 from her \$450.00 security deposit, which left a security deposit balance at the end of the tenancy of \$136.14.

The parties agreed that the tenant provided her written forwarding address to the landlord on the outgoing condition inspection report dated August 1, 2013. The parties also agreed that the tenant received a cheque from the landlord on or about December

5, 2013, in the amount of \$136.14. A copy of that cheque was submitted in evidence. There was no evidence before me that the tenant cashed the cheque from the landlord in the amount of \$136.14.

### Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Landlord's claim for item 3** – The landlord has claimed \$130.00 for ten hours of suite cleaning at \$13.00 per hour, for a total of \$130.00. The landlord alleged that the tenant left the rental unit in dirty condition. The landlord did not have any photos to support that the rental unit was left in a dirty condition, and I find that the condition inspection report does not support that the rental unit was left in a dirty state and required ten hours of cleaning, and is contradictory, as almost every item is marked with the code “Good” to indicate good condition at the end of the tenancy. Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of his claim. Therefore, I **dismiss** this portion of the landlord's claim due to insufficient and contradictory evidence, **without leave to reapply**.

**Tenant's claim** – As noted above, in the previous Decision referenced above dated November 8, 2013, the landlord's application to claim towards the tenant's security

deposit was dismissed with leave to reapply, and the Arbitrator wrote "...Leave to reapply is not an extension of any applicable time limitation deadlines...". Section 38 of the *Act* states:

**Return of security deposit and pet damage deposit**

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the tenant's full security deposit of \$450.00 within 15 days of date the landlord confirmed receiving the tenant's written forwarding address, August 1, 2013, the date of the outgoing condition inspection. I find the landlord had until August 16, 2013 to either apply to retain the tenant security deposit, or return the tenant's security deposit in full, which the landlord failed to do, as the landlord's application was dismissed with leave to reapply and there was no extension for any applicable time limitation deadlines under the *Act*.

The parties did agree during the hearing, however, that the parties had formed a mutual agreement whereby the tenant surrendered all but \$136.14 of her \$450.00 security deposit to the landlord to pay for carpet cleaning and the unpaid hydro bill. Given the

above, and taking into account that the landlord did not apply towards the tenant's security deposit again until February 17, 2014, and did not issue a cheque to the tenant for \$136.14 until December of 2013, I find the landlord breached section 38 of the *Act*, and owes the tenant double the remainder of the security deposit balance of \$136.14, as the other portion of the security deposit had already been surrendered by the tenant. Therefore, I grant the tenant double the amount of the \$136.14 portion of her security deposit, for a total of **\$272.28**.

As both of the applications before me had merit, I grant both parties the recovery of their filing fee of \$50.00, however, I find that both amounts offset each other resulting in a zero balance owing by either party in relation to the recovery of the filing fee.

Based on the above, I find that the parties have established monetary claims as follows:

Item Description	Amount
Landlord's items 1 and 2 resolved by way of a mutual agreement	\$313.86
<i>Less amount already surrendered by tenant to cover items 1 and 2 above which was retained by the landlord</i>	<i>-( \$313.86)</i>
<b>Subtotal owing by tenant to landlord</b>	<b>\$0.00</b>
Tenant's claim for double the security deposit	\$272.28
<b>TOTAL BALANCE OWING BY LANDLORD TO TENANT</b>	<b>\$272.28</b>

Given the above, I **grant** the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$272.18**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that the tenant has a cheque from the landlord in the amount of \$136.14 which I have no evidence that the tenant has cashed. As that cheque is not yet six months old, that cheque is not stale-dated and the tenant may wish to cash that cheque in partial satisfaction of the monetary order.

Conclusion

The tenant has been granted a monetary order for the balance owing by the landlord to the tenant in the amount of \$272.28. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 23, 2014

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Residential Tenancy Branch

