



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, MNR, FF

### Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The tenants and the landlord's agent called in and participated in the hearing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award in the amount of their security deposit, including double the amount?

Is the landlord entitled to a monetary award cleaning and repairs and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is an apartment in Delta. The tenancy began in August, 2009. The tenants paid a security deposit of \$514.61 on August 19, 2009. The tenants moved out of the rental unit on December 31, 2013. The female tenant took part in a condition inspection with the landlord's agent on December 31, 2013. The landlord's agent testified that she made a thorough inspection of the rental unit with the tenant on December 31, 2013 and pointed out deficiencies, repairs and cleaning for which the tenants would be responsible. She said that she wrote on the condition inspection the follow on the condition inspection report:

Walls are marked & stained & dirty – underneath Fridge & stove needs cleaning  
Floors in kitchen & hallways require cleaning.

The landlord's agent said that the tenant acknowledged these defects and signed the form signifying that she agreed with them. The landlord produced a copy of a form

entitled "SECURITY DEPOSIT REFUND". The landlord's agent testified that she filled out the form in its entirety on December 31, 2013 in the presence of the tenant and the tenant signed the form stating her acceptance and agreement with the form, including the stated deductions from the security deposit shown as follows:

- |                            |          |                        |
|----------------------------|----------|------------------------|
| • Carpets:                 | \$101.65 | Includes GST           |
| • Cleaning                 | \$320.00 | \$40.00 per 30 min X 8 |
| • Cleaning materials (20%) | \$64.00  |                        |
| • Painting:                | \$245.00 | All walls              |
| • Painting Materials (35%) | \$85.75  |                        |
| • Repairs:                 | \$60.00  | Bathroom Ceiling leak  |

TOTAL DEDUCTIONS	\$876.40
NET CHEQUE (AMOUNT OWING)	(361.79)

The landlord's agent insisted that the form was completed as shown above on December 31, 2013 and that the tenant signed the document and agreed to the above deductions which left the sum of \$361.79 due to the landlord after deduction of the security deposit.

On a separate document, also titled: "SECURITY DEPOSIT REFUND" the landlord's agent wrote the following:

\* Unit walls marked up in black felt, dirty and will need to be painted (entire unit) as Black marks are not going to wash out.

\* Entire unit needs to be cleaned.

\* Tenant had a leak in bathroom which she did not report. Repair will be a cost and walls will require painting

Landlord will contact tenant with final deduction amount with regards to cleaning the unit & painting plus repairs

The landlord submitted copies of several invoices. One invoice dated January 7, 2014 was for 8 hours of cleaning at \$40.00 per hour plus \$64.00 for cleaning supplies. A second invoice dated January 4, 2014 was for painting of a two bedroom unit at \$245.00, \$60.00 for a bathroom ceiling repair and \$85.75 for painting supplies. The painting invoice contained the statement that: "Unit required extra coat of paint due to marks on walls in entry way, living room, plus both bedrooms."

The landlord's agent testified that the tenant the bathroom ceiling was damaged due to a leak from the unit above it, but she said it was the tenants' responsibility because they

did not report the leak to the landlord and this failure caused the damage to the ceiling. The landlord said that the tenants were charged for painting because of the extensive marks to the walls.

The landlord submitted a copy letter to the tenant dated January 14, 2014. The letter set out a list of charges totalling \$876.40 and demanded payment of the sum of \$361.79 said to be the net amount due after deduction of the tenants' security deposit of \$514.61.

On January 29, 2014 the tenants submitted their application for dispute resolution to claim the return of the deposit. The tenants provided photographs of the rental unit taken at the start of the tenancy. The tenant said they showed pre-existing defects in the rental unit, including the poor condition of the paint, which was not re-painted when the tenancy started. The tenants' pictures showed areas where there were marks and scuffs on the walls and spot where small areas had been retouched. The tenants provided pictures showing carpet damage, areas where the carpet was frayed and lifting from the floor and rooms with missing baseboards.

The tenant testified that she thoroughly cleaned the unit and cleaned the carpet with her own carpet cleaner. The tenant said that there were no marks on the walls except in the front entrance hall where there were some marks caused by her husband's bicycle.

The tenant testified that she met with the landlord's agent on December 31, 2013 and took part in a condition inspection. She said that the landlord was critical of the condition and pointed out what she said were deficiencies that would result in deductions from the security deposit; at one point she told the tenant: "You'll be lucky if you get \$100.00 back. The tenant testified that she did not agree with the agent's comments, but she did sign the form presented to her to authorize the deduction of the sum of \$95.00 plus GST from the security deposit for carpet cleaning, but she did not agree to any other deductions. The tenants submitted a copy of the Security Deposit Refund Form that the tenant signed on December 31<sup>st</sup>; it contained on one entry for carpets where there was written: "95.<sup>00</sup> + 7% GST". The tenant testified that she signed to approve the carpet cleaning and the form produced by the landlord as part of its evidence was not the form that she signed; she said it was altered sometime after she signed it. The tenant testified that she no longer agrees to a deduction for carpet cleaning because she learned from a resident of the rental property that the carpets in the rental unit were replaced with lino flooring for the new tenants after the tenants moved out.

The tenant submitted a letter from the former tenant of the unit in the rental property that is directly above the rental unit occupied by the tenants. The former occupant stated that In February 2013. Maintenance workers sent by the landlord came to her

apartment to investigate a leak that had been reported by the tenants. The tenant submitted the letter to disprove the landlord's allegation that the tenants failed to report the leak that damaged the ceiling in the rental unit. The tenants denied that the walls were marked as claimed by the landlord, save for some marks in the front entrance hall caused by the tenant's bicycle. The tenant submitted a letter from the nanny who looked after her two children for four years while the tenants lived at the rental unit. She said that: "In those four years I never saw any kind of marks on the walls for example pen, marker, crayon or anything else. The one exception was some black marks in the front entrance hallway cause by (name of tenant)'s bicycle."

The landlord's agent insisted that the security deposit form was filled out and signed by the tenant on December 31, 2014 with all of the charges totalling \$876.40 noted. She said that the document provided by the tenant must have been altered by the tenant to blank out the entries on the original document and substitute the entry for carpet cleaning in the amount of \$95.00 plus 7% GST. The landlord did not provide any photographs of the rental unit to substantiate its claims concerning damage to the paint or the need for cleaning. The landlord's agent said that the carpet had not been replaced, contrary to the tenant's testimony. She said that she took pictures of the rental unit, but they did not turn out and could not be provided.

The landlord filed its application for a monetary award and an order to retain the security deposit on February 7, 2014.

### Analysis

I have examined the documents submitted by the landlord and by the tenants, in particular the two versions of the security deposit refund form. I do not accept the testimony of the landlord's agent that the security deposit form submitted by the tenant was an altered version of the form provided by the landlord; I find that the opposite conclusion is correct, namely: that the document submitted by the landlord is an altered version of the original document which was in the form provided by the tenants. I have reached this conclusion because it is implausible that so much information shown on the landlord's form could have been deleted by the tenants without leaving any sign of its alteration. I have also noted that the version of the document submitted by the landlord is a second or third generation photocopy that has been reduced in size from the original format. Finally the invoices submitted by the landlord in the amounts shown in the form are all dated in January, after the creation of the security deposit refund form on December 31, 2013. I find that the tenant did not sign the security deposit refund form produced by the landlord and she did not agree to the landlord's claim to retain the whole of the security deposit plus a further \$361.79 to be paid to the landlord. I find that she did sign the form, a copy of which the tenants submitted, agreeing to a deduction of \$95.00 plus 7% GST from the security deposit as a charge for carpet cleaning. The

tenants claimed that they should not be responsible for the carpet cleaning, even though they signed the form because they said they have learned that the carpet was removed and replaced after they moved out. I do not accept this evidence as sufficient to avoid the agreement to the deduction. It is not based on a first hand observation by the tenants but rather upon second hand information that they received from a third party. I allow the landlord's claim for the cost of carpet cleaning.

The landlord provided no photographic evidence to show that cleaning was required at the end of the tenancy. The tenant did not agree to these charges and I find that there is insufficient evidence to prove, on a balance of probabilities that the claimed amounts for cleaning were required. With respect to the claim for painting, the landlord alleged that there were black felt marks, stickers and stains on the walls throughout the rental unit. The tenant denied that there were any marks save for some marks in the front entrance hallway caused by her husband's bicycle. The tenant testified that she removed any stickers that may have been on the walls before she moved out and it may have been apparent that there had been stickers on the walls in those places, but the stickers were removed. She provided a statement from her nanny who confirmed her testimony that there were no marks, felt, crayon, or marker, except for some marks in the front entrance hall. This tenancy lasted for more than four years. The tenant's photographs show that the paint was not pristine when the tenancy started. I find that after a tenancy of this duration the rental unit would require a full repaint due to reasonable wear and tear during the tenancy. This was even more necessary in this case because the paint was not in great condition when the tenancy started. I deny the landlord's claim for the cost of re-painting.

The landlord claimed for a ceiling repair due to a leak. The landlord said that the tenant failed to report the leak and should be responsible for the repair cost. I accept the tenant's evidence that the leak was reported by the tenants in a timely way and the landlord's claim for the repair is denied.

I have allowed the landlord's claim for carpet cleaning in the total amount of \$101.65. All other claims by the landlord are dismissed without leave to reapply. The landlord has been largely unsuccessful and has recovered only the amount agreed to be deducted by the tenant; I therefore do not award the landlord the filing fee paid for its application.

The tenants applied for the return of their security deposit, including double the amount the deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord

must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

The tenants provided the landlord with their forwarding address in writing on December 31, 2013. The tenant gave her written authorization for the landlord to retain the sum of \$101.65 from the security deposit. The landlord was therefore obliged by section 38 to return the balance of \$412.96 within 15 days or file an application for dispute resolution to claim an additional amount within the 15 day period. The tenants applied for the return of the deposit on January 29, 2014 and it was not until February 7, 2014 that the landlord filed its application to claim a monetary order and to retain the deposit. This was well outside the 15 day period.

### Conclusion

The tenants authorized the landlord to retain only a portion of the tenants' security deposit and the landlord did not make its claim to retain the balance within 15 days as required by section 38(1) of the *Residential Tenancy Act*; the doubling provision of section 38(6) therefore applies to the balance kept by the landlord after the 15 day period. By this decision the landlord has been awarded the amount that the tenants authorized to be retained from their security deposit. I find that the tenants are entitled to an award in the amount of double the \$412.96 amount of the security deposit that the landlords improperly held after the expiry of the 15 day period; this doubled amount is the sum of \$825.92. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$875.92 and I grant the tenants a monetary order against the landlords in the said amount. This order may be registered in the 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: May 22, 2014

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Residential Tenancy Branch

