



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

On June 27, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; and to keep all or part of the security deposit.

On July 16, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

The spokesperson for the Landlord stated that in June of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were personally served to the Tenant with the initials "N.B.". This Tenant acknowledged receipt of these documents.

The spokesperson for the Landlord stated that in June of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were sent, via registered mail, to the Tenants with the initials "F.D.", "M.H.", and "P.W.". These Tenants acknowledged receipt of these documents.

The spokesperson for the Landlord stated that during the summer of 2014 the Application for Dispute Resolution and the Notice of Hearing were sent, via email, to the Tenant with the initials "T.A.". This Tenant acknowledged receipt of these documents.

The spokesperson for the Tenant stated that in July of 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Tenant wishes to rely upon as evidence were sent, via registered mail, to each Landlord. The spokesperson for the Landlord acknowledged that all of the Landlords named in the Tenant's Application received these documents.

The spokesperson for the Landlords stated that a CD was submitted to the Residential Tenancy Branch when the Landlord's Application for Dispute Resolution was filed. He stated that the CD contained 8 digital images. I did not have the CD at the time of the hearing nor did I have access to it when this decision was rendered.

The Landlord submitted a Digital Evidence Detail Form that indicates a CD was submitted to the Residential Tenancy Branch which contained 8 digital images. The spokesperson for the Landlord stated that a copy of the CD was not served to the Tenant as evidence for these proceedings, however the Tenant was served with 8 colour images, which are hardcopies of the digital images on the CD. The spokesperson for the Tenant acknowledged receiving the 8 colour images.

When one party wishes to rely on digital evidence, Residential Tenancy Branch Rules of Procedure require that party to serve the digital evidence to the other party. As the Landlord did not serve the Tenant with a copy of the CD, I would not be able to consider that CD even if it was available to me.

The Landlord submitted 8 black and white images to the Residential Tenancy Branch, which the spokesperson for the Landlord stated are simply black and white images of the 8 colour images provided to the Tenant. As the images are of the same subject, I find it reasonable to rely on the black and white images before me, although I recognize they likely provide less detail than the colour images the Tenant has been served.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

#### Background and Evidence

The Landlord and the Tenant agree that the spokesperson for the Tenant moved into the rental unit on May 15, 2013. The parties agree that all of the Tenants named on the Landlord's Application for Dispute Resolution subsequently signed a tenancy agreement for a tenancy that began on January 01, 2014. The parties agree that the Tenants agreed to pay monthly rent of \$1,200.00; that they paid a security deposit of \$600.00; and that they paid a pet damage deposit of \$600.00.

The Landlord and the Tenant agree that a condition inspection report was completed when the new tenancy began in January of 2014, a copy of which was submitted in evidence. The parties agree that the condition inspection report declares that the report was completed on May 01, 2013, which is inaccurate.

The Landlord and the Tenant agree that this tenancy ended on May 31, 2014 and a condition inspection report was completed on that date, a copy of which was submitted in evidence.

The spokesperson for the Tenant stated that a forwarding address was provided to the Landlord, in writing, on June 15, 2014. The spokesperson for the Landlord acknowledged receiving the forwarding address in writing. He believes the address was received on June 15, 2014, although he is not certain of that date.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit or pet damage deposit and that the Landlord did not return any portion of those deposits. The Tenant is seeking the return of double the damage deposit.

The Landlord is seeking compensation, in the amount of \$362.00, for cleaning the carpet. The Landlord submitted a receipt to show this expense was incurred. The Landlord contends that the carpet was stained at the end of the tenancy and needed professionally cleaning. The Landlord argued that the carpets should have been steam cleaned by the Tenant at the end of the tenancy.

The spokesperson for the Tenant stated that some spots on the carpet were scrubbed with a commercial cleaner and the carpet was vacuumed, although it was not steam cleaned.

The condition inspection report that was completed at the end of the tenancy does not indicate that the carpet requires cleaning. The Landlord with the initials "T.G." stated that she completed the inspection report but, because she was unfamiliar with how to complete the report, she did not complete a detailed report. She stated that she did not conduct a detailed inspection and she did not notice the stains on the carpet until the unit was inspected again with another Landlord.

The Landlord submitted three photographs of the carpet, which appears to show there are marks on the carpet that are consistent with staining. The spokesperson for the Landlord stated that some of the stains appear to be a wax like substance.

The spokesperson for the Tenant stated that there were no wax stains on the carpet. She stated that there does appear to be some small marks on the photographs of the carpet, which she speculates may simply be dirt or a footprint. She does not recall those marks being present during the final inspection.

The Tenant argued that the cost for cleaning the carpet was excessive. She submitted a quote to show that a carpet cleaner could be rented for \$54.99. She stated that the Tenant is willing to have this amount deducted from the security deposit for cleaning the carpet.

The Tenant argued that because the Landlord did not inform her at the time of the inspection that the carpet was not adequately cleaned, the Tenant was denied the opportunity to remedy this deficiency.

The Landlord and the Tenant agree that the floor in the living room was scratched on one place during the tenancy. The Landlord contends the scratch was 2-5 inches long and that it exceeded "normal wear and tear". The Tenant contends the scratch was approximately 3 inches long and that it was "normal wear and tear". Neither party submitted a photograph of the scratch.

The Landlord submitted an estimate that indicates it would cost \$749.00 plus tax to replace the damaged pieces of the floor. The spokesperson for the Landlord stated that the floor has been replaced as a result of an insurance claim which is unrelated to the scratch on the floor.

### Analysis

Section 38(1) of the *Residential Tenancy Act (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. On the basis of the undisputed evidence, I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution on June 27, 2014, which is less than 15 days after the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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 comply with section 38(1) of the *Act*, I dismiss the Tenant's claim for double the security deposit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean the carpet at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for cleaning the carpet, which in these circumstances is \$362.00.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Although the condition inspection report that was completed at the end of this tenancy does not indicate that the carpet required cleaning at the end of the tenancy, I find that the Landlord has submitted a preponderance of evidence to the contrary.

In determining that the Landlord had submitted a preponderance of evidence that shows the carpet needed cleaning I was influenced, to some degree, by the photographs submitted in evidence. Although the photographs before me were not of high quality, they do show marks that corroborate the Landlord's submission that the carpets were stained.

In determining that the Landlord had submitted a preponderance of evidence that shows the carpet needed cleaning I was influenced, to some degree, by the fact that the Tenant was willing to compensate the Landlord in the amount \$54.99, which is the price of renting a carpet cleaner. I find it highly unlikely that the Tenant would agree to pay anything for cleaning the carpet if the carpet was truly clean at the end of the tenancy.

In determining that the condition inspection report should not be relied upon, I was influenced, to some degree, by the condition inspection report itself. The report that was completed at the end of the tenancy provides no details of the condition of the rental unit at the end of the tenancy, with the exception of a scrape on the floor. The report does not indicate whether the rental unit is in good or poor condition. As it is of such poor quality, it cannot be relied upon to show that

the carpet was in good condition. The report corroborates the Landlord's testimony that she did not conduct a detailed inspection of the rental unit when the report was completed.

In determining that the carpets need to be cleaned at the end of the tenancy I was guided by Residential Tenancy Branch Policy Guidelines which read, in part:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I concur with these guidelines. As one of the Tenants occupied this rental unit for a period of one year and there were pets in the rental unit, I find that the carpets should have been steam cleaned at the end of the tenancy.

I do not accept the Tenant's argument that the Landlord's claim for cleaning the carpet is excessive. While I accept that the Landlord could have rented a carpet cleaner and spent time cleaning the carpet, the Landlord would have then be entitled to compensation for the time they spent cleaning the carpet. I find it entirely reasonable for a landlord to opt not to complete this task by themselves and to hire a professional carpet cleaner.

I do not accept the Tenant's argument that the Tenant was denied the opportunity to clean the carpet because the Landlord did not inform the Tenant that the carpet required additional cleaning at the time of the final inspection. A tenant is responsible for leaving the rental unit in reasonably clean condition at the end of a tenancy. Although it may be in a landlord's best interests to oversee the cleaning, a landlord is not required to overseeing the cleaning. In these circumstances, where the rental unit was inspected on the last day of the tenancy, I find it unlikely that the Tenant would have had time to steam clean the carpets even if the Landlord had discussed that need with the Tenant.

Section 37 of the *Act* requires tenants to leave the rental unit undamaged except for reasonable wear and tear. I find that the Landlord has submitted insufficient evidence to show that the scratch on the living room floor exceeds normal "wear and tear". In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlord's claim that it exceeds normal "wear and tear" or that refutes the Tenant's claim that the damage is simply "wear and tear". As the Landlord has failed to establish that the damage exceeds normal "wear and tear", I dismiss the Landlord's claim for repairing the floor.

As the Landlord did not apply to recover the fee for filing an Application for Dispute Resolution, I am unable to compensate the Landlord for that cost.

I find that the Tenant did not need to file an Application for Dispute Resolution, as I would have found that any unused portion of the security/pet damage deposit should be returned to the Tenant even if the Tenant had not filed an Application. As there was no need for the Tenant to

file an Application for Dispute Resolution, I dismiss the Tenant's claim to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$362.00, for cleaning the carpet and I authorize the landlord to retain this amount from the Tenant's security deposit. As the Landlord has not established that it is entitled to retain any other portion of the security/pet damage deposit, the Landlord must return the remaining \$838.00.

Based on these determinations I grant the Tenant a monetary Order for \$838.00. 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: November 10, 2014

---

Residential Tenancy Branch

