



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**MNR, MNDC, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent or utilities compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

At the start of the hearing the landlord confirmed that there is no claim for unpaid rent.

The details of dispute section of the application referenced a number of items claimed:

- Retain the security deposit;
- Cleaning costs;
- Carpet cleaning;
- Replace bedroom carpet \$446.22;
- Sub-floor work; and
- Replace dining room carpet.

The landlord supplied an evidence package, served to the tenant via registered mail on August 22, 2014, with the hearing documents. The unnumbered documents did not include a detailed calculation of the claim made.

The tenant stated that she was able to identify the single documents related to the items recorded in the details of dispute. There was no calculation of a claim made for utilities.

Section 2.5 of the Residential Tenancy Rules of Procedure requires an applicant, to the extent possible, to submit a detailed calculation of the claim made at the same time the application is submitted. There are a few exceptions, such as when a claim is made against a security deposit. However, in those cases the detailed calculation should be supplied as soon as possible.

The landlord has not supplied a calculation of the claim; only 1 sum, for carpet replacement, was detailed on the application. Given the tenant's confirmation that she was able to identify the single invoices for the items listed above, I determined it would not prejudice the tenant to proceed with hearing the claim related to those items. In the absence of a calculation of a claim for utility costs, I determined that the claim for utilities would be dismissed.

There was a claim for damage to the rental unit; not damage or loss under the Act.

#### Issue(s) to be Decided

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

May the landlord retain the security deposit?

#### Background and Evidence

The tenancy commenced on August 1, 2012; rent was \$1,400.00 per month. A security deposit in the sum of \$700.00 was paid. The tenant rented a 5 bedroom, 3,000 sq. foot house; over 3 levels. The fixtures are original in the twenty-one year old home. The landlord estimated the carpets are 5 years old.

A copy of the standard Residential Tenancy Branch (RTB) tenancy agreement and a 1 page addendum was supplied as evidence. Clause 5 of the tenancy agreement references any term in the agreement that prohibits or restricts pets. The addendum includes a smoking prohibition, but no pet prohibition. The addendum required the carpets to be professionally cleaned at the end of the tenancy.

The landlord has made the following claim:

Cleaning	800.00
Carpet cleaning	307.11
Bedroom carpet replacement	446.02
Sub-floor sealant	130.00
Dining room carpet replacement – insurance deductible.	500.00
<b>TOTAL</b>	<b>\$2,183.13</b>

A copy of the condition inspection report completed with the tenant at the start and end of the tenancy was submitted as evidence. At the start of the tenancy a number of areas were recorded as being in poor condition or dirty:

- Entry walls and trim, entry carpet had lots of wear and tear and the fixtures were dirty;

- All windows were dirty; 4 light fixtures were dirty, 1 light fixture was broken and another in fair condition; and
- The ensuite toilet and a bedroom door were dirty.

Notations in relation to bedrooms indicated wear and tear, stains and a very stained living room carpet. The living room carpet carries on into the dining room area. With the exception of the kitchen and master bedroom and rec room, which were rated as fair at the start of the tenancy; all other carpeted areas were rated as in poor condition.

At the end of the tenancy a number of areas of the home were unidentified as dirty:

- Light fixture in entry; oven; main bathroom ceiling; master bedroom window; upper hall carpet; bedroom 4 carpet and window; hall window and downstairs bathroom floor.

At the start of the tenancy the rec room floor was considered to have wear and tear and in fair condition. At the end of the tenancy the flooring was rated as poor and very stained. No other area of the home rated poor at the end of the tenancy was found to have been in better condition at the start of the tenancy. The landlord said that the inspections are subjective and that one person's assessment of the unit could differ from another's assessment. The landlord stated the unit was clean at the start of the tenancy and filthy at the end.

On July 31, 2014 the parties signed the move-out condition inspection report. The tenant did not sign the section where she could either agree or disagree to the report. Within fifteen days the landlord applied claiming against the security deposit.

The landlord supplied an August 8, 2014 invoice in the sum of \$800.00 for a "full move out/in clean." The owner was charged a flat rate for a complete cleaning of the home; all walls, windows, vents, lights, all kitchen appliances, 3 bathrooms, 5 bedrooms, dining room, rec room, living and bonus room and laundry room.

A photo of a kitchen appliance, pulled out from the wall, showed grease all along the side of the appliance. The landlord said the walls were dirty and the stove top was covered in grease. A photo of the older model glass-top stove showed some rings on the top. A photo of the dirty oven was submitted. A double sink photo showed what appeared to be stains. A photo of a shower floor showed some dirt and a photo of a dirty window track was supplied.

The landlord submitted a photo of the receipt issued to the tenant for professional carpet cleaning she had completed on June 8, 2014. However, the landlord said that the tenant did not have the carpets cleaned at the end of the tenancy.

The landlord supplied a \$307.00 invoice issued on August 2, 2014 for carpet cleaning in the home. The invoice referenced highly soiled edges of carpet in the dining room. The cause was determined to be cat urine. The cleaner found the carpets to be heavily soiled and stained throughout and that the bottom 2 rooms had many permanent stains.

The landlord said that prior to the carpet cleaning there was a faint smell; after the carpet was wet the smell was very obvious. They applied deodorizer to 2 rooms, but that did not help.

The landlord supplied an August 13, 2014 quote for carpeting for a small upstairs bedroom in the sum of \$446.22. The landlord said this flooring was replaced as a result of damage caused by the tenant.

An August 8, 2014 invoice in the sum of \$130.31, for shellac and poly was submitted as evidence. The landlord said this product had to be applied to the dining room sub-floor, in order to seal the sub-flooring.

The landlord sent the tenant a letter dated September 19, 2013 in which the tenant was informed that landlord had become aware of the presence of a cat in the home. The tenant was reminded she must comply with the pet policy and that a pet had not been approved. The landlord said that the legislation requires a tenant to inform the landlord of a pet so that another inspection of the rental unit may be made before a pet may be placed in the home.

The landlord gave the tenant notice of entry on a number of occasions, but each time they entered there was no evidence of a cat. The landlord believed the tenant was removing the cat, as she was pre-warned of the inspections.

Due to the presence of a cat in the home the dining room carpet had to be replaced. The dining and living rooms are contiguous, so both areas had to be replaced. The landlord has claimed the \$500.00 insurance deductible. An August 13, 2014 email to the landlord's agent, from his insurer stated they did not yet have a flooring quote, so they could not confirm the extent insurance could play in carpet replacement. At least one \$500.00 deductible was confirmed; no information on what this applied to was given in the email. The email referenced the possibility of as many as 6 deductibles; one for each of 5 bedrooms and the living room and dining room.

A copy of a Residential Rental Insurance renewal that expired November 2014 was supplied as evidence. The deductible for building elements is shown as \$500.00.

The tenant responded that the house was cleaned at the end of the tenancy. She did not pull out the appliances and they had not been pulled out at the start of the tenancy, for inspection. The top of the stove was stained, as was the sink; they were not dirty. The tenant confirmed she did not clean the oven or vacuum the stairs and that she also failed to wash the woodwork trim and trim along the doors. The tenant said that the sum the landlord is claiming for cleaning is ludicrous.

The tenant denied that she ever had a cat. The tenant confirmed that at one point when the landlord was at the house there was a cat outside and that the landlord saw that cat. The tenant said this was not her cat, but belonged to someone in the neighbourhood. The tenant did not deny that there could have been stains around the dining room carpet, but that any cat urine would have been the result of the actions of a previous tenant.

In response the landlord said he saw a cat sitting in the living room window. The tenant denied that was the case and stated the landlord's son had been playing with a cat that was in the yard, but there was not a cat in the house. The landlord's agent came to the home 3 or 4 times to inspect the property and each report indicated that no evidence of a cat was found in the home.

The tenant stated that when she moved in the landlord's spouse told her the carpet was stained and needed to be replaced. The landlord planned to eventually install hardwood flooring. The

landlord replied that they are replacing the carpet with hardwood but that they did not plan on having to complete this work so soon.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

When a tenant leaves a rental unit Section 37(2) of the Act requires:

*(2) When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

From the evidence before me I find that the tenant did not leave the rental unit reasonably clean. The tenant has confirmed that areas of the home were not fully cleaned. I find that this admission; combined with the brief notations on the condition inspection report support some compensation to the landlord. I have considered the Residential Tenancy Regulation; which provides:

### ***Evidentiary weight of a condition inspection report***

**21** *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.*

The landlord provided 7 photographs of the interior of the home that related to the need for cleaning. I find that these photographs failed to reflect the need for cleaning that totalled \$800.00. I agree with the tenant that the sum claimed did not reflect the cost of the cleaning that was required to bring the home to the standard required by the legislation. A tenant is not required to bring a unit to a standard beyond reasonably clean. I find that the tenant has shown that some cleaning was required, but the sum claimed exceeds what could have been reasonably incurred by the landlord.

The cleaning invoice was issued for a move-out and move in cleaning. It is not unusual for a landlord to carry out cleaning to further prepare a unit for new occupants but there was no breakdown supplied to indicate the cost of bringing the unit to a reasonably clean state. Therefore, I have, as suggested by Residential Tenancy Branch (RTB) policy (#16) applied a nominal cost to the cleaning required in the sum of \$300.00. This is at the very high end of nominal costs, but the home was large and all trim had to be washed, along with the other areas confirmed by the photographs and through the tenant's admission. The balance of the claim for cleaning is dismissed.

From the evidence before me the carpets in the home were all considered to be in poor condition at the start of the tenancy. The move-out inspection report confirmed that carpets were, overall, not in any worse condition that they had been at the start; with wear and tear and stains notated in the areas the landlord has claimed for replacement. The living room was recorded as having been very stained at the start of the tenancy; there was no record of the dining room, but that carpet formed part of the living room area.

There is disputed testimony in relation to the presence of a cat on in the home. Initially the landlord said he was at the property and saw a cat outside. Later during the hearing the landlord said he saw a cat sitting in the window. The letter issued to the tenant in September 2013 made no mention of where the cat was seen; leading me to question whether the tenant did have a cat. A number of inspections of the home did not reveal the presence of a cat and while the tenant would have prior notice of the inspection it seems reasonable that any damage caused by a pet; such as urination on carpets, would have been discovered during these inspections.

Even if the tenant did have a cat I am still not convinced that the damage to the dining room carpet was caused during this tenancy. The carpets were already in poor condition and it is possible, as suggested by the tenant, that the damage had been caused by a previous occupant's pet.

Therefore, I find, on the balance of probabilities that the landlord has failed to prove that the tenant had a cat that caused damage to the dining room carpet. Further, based on the assessment of the flooring at the start of the tenancy it appears that the carpet was already in need of replacement. Therefore, I find that the claim related to carpeting and sub-flooring is dismissed.

I note that section 23(2) of the Act (2) requires a condition inspection report to be completed at the time the tenant starts keeping a pet, when the landlord has permitted a pet and a previous inspection was not completed. The tenancy agreement and addendum were silent on the issue of pets; there was no prohibition such as that included for smoking.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$350.00 in satisfaction of the monetary claim. Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the balance of the deposit in the sum of \$350.00.

Based on these determinations I grant the tenant a monetary Order in the sum of \$350.00. 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.

### Conclusion

The landlord is entitled to \$300.00 compensation of cleaning costs. The balance of the claim is dismissed.

The landlord will retain \$350.00 of the security deposit.

The landlord is Ordered to return the balance of the security deposit to the tenant.

This decision is final and binding 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: March 19, 2015

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Residential Tenancy Branch

