



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: MNSD, MND, FF

For the tenant: MNSD, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee paid for this application.

At the outset of the hearing, both parties confirmed receiving the other's documentary and photographic evidence and neither party raised any concerns or issues regarding service of the applications.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to a monetary order comprised of double her security deposit and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on March 24, 2012, ended on September 28, 2014, monthly rent was \$1300.00, and the tenant paid a security deposit of \$650.00 at the beginning of the tenancy. The landlord has not returned the tenant's security deposit, having filed an application claiming against the security deposit.

#### ***Landlord's application-***

The landlord's listed monetary claim is \$650.00; however, the attached monetary order worksheet states that her total monetary claim is \$720.00. It appeared the landlord wished to retain the tenant's security deposit for the total of her monetary claim and I have considered her claim up to the amount of \$650.00, due to her conflicting evidence and that being the amount listed in her application.

The breakdown on the landlord's monetary order worksheet showed a claim of \$170.00 for carpet cleaning, shower cleaning for \$80.00, bathroom floor cleaning for \$60.00, kitchen floor cleaning for \$50.00, patio cleaning for \$60.00, remaining cleaning for \$160.00, and drywall damage for \$140.00.

In support of her application, the landlord's agent (hereafter "landlord") confirmed that at the beginning of the tenancy, she had retained a property management company to represent her at that time, and that company conducted the move-in inspection and prepared the condition inspection report. During 2013, the landlord moved back to the province and began taking over the affairs of the tenancy.

After arranging for a move-out inspection on September 28, 2014, the landlord arrived at the rental unit that night and found that no cleaning had been done by the tenant, and that the rental unit was filthy, according to the landlord.

The landlord submitted that she attempted to help the tenant clean the rental unit, but that the tenant would not allow that, saying she had cleaned and steam cleaned the rental unit. The landlord submitted further that she then just asked the tenant if she could use her cleaning materials and product, at which time she realized the tenant had no sponges, brushes or product in which to clean the rental unit.

Some items mentioned by the landlord were pink and blue stains on the shower, human waste around the toilet, wall damage, and pebbles in the carpet.

The landlord submitted that when she went back to the rental unit the next day, she realized the rental unit was even dirtier than she had noticed the night before with the tenant present, which upset her next tenants as they were to move in that day. According to the landlord, the next

tenants threatened to find another place to live, which caused the landlord to give the next tenants one month free rent of \$1450.00 so that they could clean and make the small repairs.

The landlord confirmed that the costs of \$720.00 listed on their monetary order worksheet were all estimates gleaned from research, and that they would be included as part of having to give the next tenants one month's free rent. The landlord confirmed further that the age of the carpet was at least from 2004.

The landlord's relevant evidence included, but was not limited to, the move-in condition inspection report and move-out condition inspection report, photographs of the rental unit, text message communication between the parties, and the written tenancy agreement. The landlord confirmed that some as to the photographs submitted into evidence, some were taken the next day by the landlord, some were taken by the landlord's father-in-law, and some were taken by the next tenants.

*Tenant's response-*

Through her written summary, with assistance from her agent, the tenant submitted that the landlord was not present at the move-in inspection and that the inspection took only about 10 minutes. The tenant submitted further that the landlord's agent at the time notice within those 10 minutes that the rental unit was dirty and had a lot of wear and tear. The tenant contended that the carpet had not been steam cleaned at the beginning of the tenancy and that there was some wall damage.

The tenant submitted further that the move-out inspection took over an hour and that the landlord complained about everything, but was not specific about the tiny details she noted.

The tenant also wrote that she worked as head of housekeeping at a motel for 8 years, managing over 30 housekeepers, and that she knows all the professional cleaning products; however, the landlord wanted to hold the tenant responsible for reasonable wear and tear, pre-existing stains, and damage to the walls.

The tenant submitted she has allergies and keeps her home free from dust. The tenant wrote further she had 4 people cleaning the rental unit for 8 hours.

The tenant contended that the photographs of the landlord were not taken at the time of inspection, and were taken on multiple days after the inspection. The tenant took exception with the photos of the landlord, suggesting that they may have been altered or depicted any toilet or other items, pointing to her photographs said to be taken on September 28, 2014, at the inspection. I note that the photographs of the tenant depicted the shower and toilet as a whole.

*Tenant's application-*

The tenant's monetary claim is in the amount of \$1300.00, comprised of her security deposit of \$650.00, doubled. The tenant is also requesting recovery of the filing fee paid for this application in the amount of \$50.00.

The tenant submitted that she provided the landlord with her written forwarding address on September 28, 2014, on the move-out condition inspection report and that as the landlord failed to return the deposit, she is entitled to double that amount.

The tenant's additional relevant evidence included the move-in condition inspection report and a receipt for a carpet cleaning machine.

### Analysis

#### *Landlord's application-*

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss, under section 7(2).

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the case before me, I find I could not rely upon the move-out condition inspection report to verify that the tenant had damaged the rental unit, as the move-in condition inspection report shows that the rental unit was not in satisfactory condition at the beginning of the tenancy. For instance, on the move-in condition inspection report, as prepared by the landlord's agent at the time, the agent noted that the carpet had not been cleaned and was stained. The move-in condition inspection report also noted damage to the tub and nail holes and other wall damage.

The only satisfactory items at the beginning of the tenancy, as noted on the move-in condition inspection report, were the kitchen appliances, the patio, deck or balcony, and curtains and mirrors in the bedroom.

I was also not persuaded by the landlord's photographs of the rental unit, as most of the photographs depicted the item at close range, with no corresponding close range angle at the beginning of the tenancy so as to be able to identify that the items in question were in the rental unit or had been damaged by the tenant. I also found the reliability of the landlord's photographs to be in question as they were all taken after the move-out inspection and by at least 3 different persons, including the next tenants. On the other hand, the tenant's photographs taken on the day of the inspection showed long and medium range photographs, including the whole toilet, so that the items were easily identifiable. I found the photographs of the rental unit by the tenant show a very clean condition, which led me to conclude that the tenant had complied with her obligations under section 37(2) of the Act.

It was further unclear why the landlord's claim was \$720.00, for cleaning and minor wall repair, when the next tenants were allegedly given free rent totalling \$1450.00 due to the condition of the rental unit. This led me to believe that the move-in condition inspection report more accurately depicted that there are issues with the rental unit over and above those for which a tenant would be responsible.

Take in totality, I find the landlord submitted insufficient evidence to show that the tenant did not properly clean the rental unit or caused damage beyond reasonable wear and tear during the tenancy, and I therefore dismiss her monetary claim of \$720.00. I likewise dismiss the landlord's request to recover the filing fee paid for this application.

Due to the above, I dismiss the landlord's application, without leave to reapply.

*Tenant's application-*

Section 38(1) of the Act requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence was that the tenancy ended and the landlord received the tenant's written forwarding address on September 28, 2014, and that when she made her application for dispute resolution claiming against the security deposit on October 9, 2014, the landlord complied with section 38(1) of the Act.

Although I find the tenant is not therefore entitled to double her security deposit, as I have dismissed the landlord's monetary claim against the tenant's security deposit, I find the tenant is entitled to a return of her security deposit of \$650.00.

I also allow the tenant recovery of her filing fee of \$50.00 paid for this application, pursuant to section 72(1) of the Act.

Due to the above, I grant the tenant a monetary award of \$700.00, comprised of her security deposit of \$650.00 and for recovery of the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$700.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants' application for monetary compensation is granted in part as I have granted her a monetary order of \$700.00.

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 18, 2015

---

Residential Tenancy Branch

