



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**MND, MNDC, MNSD, FF**

### **Introduction**

This was a cross-application hearing.

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

The tenant applied requesting return of the security deposit and to recover the filing fee cost.

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**

The landlord initially submitted an application on November 3, 2014. On that date the three respondents were served with Notice of the hearing, sent via registered mail. The landlord had obtained addresses for each tenant at the end of the tenancy. Registered mail tracking information was supplied for each registered mail package. The co-tenants who did not attend the hearing did not retrieve the registered mail and it was returned to the landlord on November 27, 2014.

Therefore, pursuant to section 89 and 90 of the Act I find that the tenant tenants who were not present at the hearing are deemed served with Notice of the hearing effective November 8, 2015.

The landlord had not applied requesting to retain the security deposit. On November 27, 2014 the landlord amended the application to include a claim against the deposit. There was no evidence before me that this amended application was served to the tenants. However, Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant.

The tenant confirmed that his name has been reversed on his application. The name and surname have been corrected.

I note that the landlord's application reflects a claim for damage to the rental unit only.

#### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,015.00 for damage to the rental unit?

May the landlord retain the security deposit in satisfaction of the claim or is the tenant entitled to return of the deposit?

#### Background and Evidence

The tenancy commenced in September 2013; the three co-tenants paid a security deposit in the sum of \$2,400.00. The tenants signed a set of rules for the rental unit that prohibited smoking in the unit. The unit was furnished and linens and towels were provided. The owner of the home lived on an upper level; the rental unit was in a lower level and was self-contained.

A move-in condition inspection report was not completed.

The tenants vacated the unit in April 30, 2014. A move-out condition inspection report was not arranged by the landlord.

A copy of a portion of a September 23, 2014 decision issued by a Residential Tenancy Branch arbitrator was supplied as evidence. A complete decision was reviewed with the parties during the hearing. The arbitrator found that the tenants had yet to meet the requirement of section 38(1)(b) of the Act which requires a tenant to provide the landlord with a written forwarding address.

On September 23, 2014 the arbitrator found that effective that date the landlord had been provided the written forwarding address, included on the tenant's application for dispute resolution that had been served to the landlord. The landlord was given until October 8, 2014 to either return the security deposit, in full, to the tenants, or to make a claim against the deposit.

The landlord confirmed that he did not attempt to return the deposit to the address included on the application. The landlord's application for dispute resolution was made on November 3, 2014 and did not include a claim against the deposit.

The landlord has made the following claim:

3 sets of towels	\$75.00
3 king fine linen sheet sets	300.00
1 king size mattress pad	130.00
1 TV power bar	10.00
2 keys not returned, replace locks	150.00
Smoking penalty	750.00
Carpet cleaning	250.00
Suite cleaning	350.00
<b>TOTAL</b>	<b>\$2015.00</b>

No verification for the costs claimed was supplied. The landlord submitted 24 photographs which were not full-sized and were difficult to discern

The tenant agreed that the landlord is entitled to compensation as claimed for the TV power bar and the keys and lock replacement.

The towels, sheets and mattress pad were all approximately six months old at the start of the tenancy. At the end of the tenancy it appeared these items had not been washed, some were torn, had holes and could not be used for the next tenants. Two sets of towels were missing and the mattress pad was stained.

The landlord purchased replacement items at a large retail outlet.

The owners of the home live in an upper unit and in the early stage of the tenancy believed the tenants were smoking in the home. The tenancy agreement included a term that the unit was 100% non-smoking and that smoking inside the home would result in a minimum charge of \$250.00 for each room and that the tenant would be asked to leave the property. The landlord has charged \$250.00 for each of the rooms occupied by the co-tenants. The landlord confirmed that the tenants had their own bedrooms, kitchen, bathroom and living area.

A photo of the carpet at the entry showed stains. The landlord said that the owner steam cleaned four areas of the rugs. The sum charged is for the home owners' time.

The landlord said that nothing appeared to have been cleaned. Photos showed dirt on the baseboard heaters, a toaster that was not wiped off, baseboards were dirty, and nothing had been wiped off. A photo of a table top showed evidence of a lack of cleaning. The bathtub and oven had not been cleaned. The landlord said that not even

a minimal effort had been made to clean the unit. The sum charged is for the home owners' time spent cleaning.

The tenant responded that after eight months of use the towels should require replacement. The sheets were not new and had been used and should have required replacement at the end of the tenancy. The tenant was not sure which mattress pad the landlord was referring to. The tenant said that if a pad had to be replaced it should not cost more than \$65.00. The tenant wanted to see receipts for the items the landlord said they purchased.

The tenant said that they smoked outside of the unit but that the smell adhered to their clothing. The landlord provided an air purifier for the unit, to mitigate this odour. The tenant said there was conflict with the property owners.

The tenant said that the stains in the carpet at the entry are likely from their shoes. The tenants used detergent in an attempt to clean the carpets.

The tenant did complete some cleaning, to the best of his ability. The tenant did not deny that some areas of the unit were neglected and not cleaned.

### 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.

I have considered Residential Tenancy Branch (RTB) policy which suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I have also considered RTB policy (#40), taking into account the useful life of the items claimed for replacement.

No evidence was supplied by the landlord in support of the manufactures suggested useful life of items claimed.

Therefore, in relation to the towels, sheets and mattress pad, I find that the landlord has failed to show that these items were not beyond their suggested useful life. It is not difficult to accept the tenant's submission that after use over a 14 month period the items should be replaced for the use of the next tenants. Therefore, I find that this portion of the claim is dismissed.

The tenant has agreed to pay \$10.00 and \$150.00 respectively for the power bar and keys and replacement of the locks.

The smoking charge that is included in the agreement signed by the parties does not comply with the Residential Tenancy Regulation. The Regulation sets out allowable fees, which do not include payment of a charge of the nature included in the agreement. There was no evidence that the sum claimed related to an actual loss incurred by the landlord as a result of a breach of the Act by the tenants.

Section 5 and 6 of the Act prohibit contracting out of the Act and provide that a term of an agreement is not enforceable if the term fails to comply with the legislation. Therefore, as the smoking charge term fails to comply with the legislation I find that the claim for the smoking charge is dismissed.

There was no dispute that the tenants caused some staining to the carpet at the entry to the unit. In the absence of evidence verifying the actual costs incurred by the landlord for carpet cleaning I find that the landlord is entitled to nominal compensation in the sum of \$75.00. The balance of the claim is dismissed.

Section 37(2) of the Act requires a tenant to leave the rental unit in a reasonably clean state. From the evidence before me I find that the tenants did little to clean the unit. The bathtub, oven, furniture and surfaces appear not to have been cleaned. Therefore, I find that the landlord is entitled to the sum claimed for the time spent by the owner cleaning the unit.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted/Agreed
3 sets of towels	\$75.00	0
3 king fine linen sheet sets	300.00	0
1 king size mattress pad	130.00	0
1 TV power bar	10.00	10.00
2 keys not returned, replace locks	150.00	150.00
Smoking penalty	750.00	0
Carpet cleaning	250.00	75.00
Suite cleaning	350.00	350.00
TOTAL	\$2015.00	\$585.00

In relation to the deposit held in trust by the landlord, Section 17 of the Residential Tenancy Regulation provides that a landlord must complete a condition inspection report with the tenant. It is the landlord's responsibility to arrange the inspections. When a landlord fails to comply with the inspection requirements section 36(2) of the Act provides that the landlord's right to claim against the deposit for damage to the rental unit is extinguished.

Therefore, as the landlord failed to arrange inspections I find that the landlord's right to claim against the deposit for damage was extinguished. However Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a

landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the sum of \$585.00 in satisfaction of the claim.

When the landlord failed to follow the instructions given in the September 23, 2014 decision the landlord then triggered section 38(6) of the Act, which would see the security deposit value doubled. The tenant has waived this requirement.

Therefore, I find that the tenant is entitled to return of the \$2,400.00 security deposit, less \$585.00 due to the landlord.

As each application has merit I find that the filing fees are set off against each other.

Based on these determinations I grant the tenant a monetary Order for the balance of the security deposit in the sum of \$1,815.00. 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 compensation in the sum of \$585.00. The balance of the claim is dismissed.

The tenant applicant is entitled to return of the balance of the security deposit in the sum of \$1,815.00.

The filing fees are set off against the other.

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: May 29, 2015

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Residential Tenancy Branch

