



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, O, FF

### Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord, for compensation for cleaning the rental unit, and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Is the Tenant entitled to compensation for cleaning the rental unit?

### Background and Evidence

The Tenant testified that on January 16, 2015, she viewed the rental unit with the Agent for the Landlords. The tenancy was to start on March 1, 2015.

The Tenant testified that the rental unit was poorly cleaned. She stated that the Agent for the Landlords informed her he agreed that the rental unit still needed cleaning, and even he would not move in as the cleanliness was not suitable for him.

The Tenant testified that she suffers from medical conditions that prevent her from doing heavy cleaning and which require a clean environment. The Tenant testified she was under the impression after the initial viewing that the rental unit would be cleaned again before she moved in.

On January 19, 2015, the parties signed a written tenancy agreement for a one year fixed term tenancy. The rent was \$895.00 per month and the Tenant paid a security deposit of \$447.50. The Tenant was to move into the rental unit a day or two earlier than the start of the tenancy on March 1, 2015.

On February 27, 2015, the Tenant began moving in but found that the rental unit had not been cleaned since the initial viewing. She asked the Agent to bring in a professional cleaner. The Agent explained to the Tenant that he would not be able to find a cleaner that day and the next day was Saturday.

The Tenant found a cleaner to come into the rental unit on February 28, 2015. She asked the Agent if the Landlords would reimburse her for the cleaning. Her testimony is that the Agent assured her she would be reimbursed for this cleaning.

In evidence the Tenant has provided a copy of the incoming condition inspection report that was conducted on February 27, 2015. Under the box "Repairs to be completed at start of tenancy" there are two notes which state, "CK painting time" and "CK cleaning issue". The Agent testified that these notes meant he was going to check if the owners would pay for painting and that he would check to see if he could have someone clean the rental unit.

The Tenant had a professional cleaner come into the rental unit and paid their invoice in the amount of \$252.00. In evidence the Tenant has provided a copy of this invoice. The Tenant again testified that at the time of the condition inspection report the Agent informed her that he was going away to check with the owners and at one point he agreed she could get a cleaner and she would be reimbursed.

On or about March 2, 2015, the Tenant informed the Landlord that the unit could not be cleaned and that it still had a strange odour. She informed the Agent that day that she would be leaving the rental unit. On March 6, 2015, she wrote to the Agent informing him she was terminating the tenancy.

The Agent testified that as he was leaving the rental unit after conducting the incoming condition inspection report on February 27, he informed the Tenant that the rental unit had been professionally cleaned. He informed the Tenant that the stove had been

replaced; however, the oven had something baked on the surface and it was not removed in the cleaning.

The Agent testified that he informed the Tenant that she could have the rental unit cleaned at her expense if she required it cleaner. He testified that he informed the Tenant he would check with the owners to see if they would pay for the cleaning. He argued that even the cleaners hired by the Tenant must not have done a very good job, as the Tenant was still not satisfied with the rental unit after they cleaned it and she immediately gave notice she would be leaving the rental unit and would break the lease.

The Agent testified he informed the Tenant she would be responsible for any loss of rent due to breaking the lease. The rental unit was re-rented for April 1, and the Landlords did not suffer a loss of rent due to the breaking of the lease by the Tenant.

The Agent testified that he believed the Tenant would be reimbursed, but that was based on the fact that the Tenant had signed a one year lease. He testified that the Landlords would only pay for the cleaning if she had been living there for the term of the lease.

The Tenant testified that when she left the rental unit she informed the Agent for the Landlord over the phone of her forwarding address to return the security deposit to. The Tenant testified that she gave the Agent the forwarding address over the phone a second time. She agreed she did not provide the forwarding address in writing to the Landlords.

The Tenant testified that she received the security deposit back from the Landlords on May 12, 2015. I note the Tenant's Application was processed on April 30, 2015, and she served it after this date on the Agent for the Landlords.

### Analysis

Based on the evidence and testimony, and on a balance of probabilities, I find the Tenant's claim for the cost of cleaning the rental unit should be allowed, and the claim for return of double the security deposit should be dismissed, for the following reasons.

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the Act, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[Reproduced as written.]

In this instance the Landlords returned the security deposit after they received the Tenant's address in her Application, and it was returned within the 15 days as required above. Therefore, the Tenant is not entitled to a doubling of the security deposit.

In regard to the cleaning of the rental unit, under section 32 of the Act the Landlords are required to provide the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence before me was that at the initial viewing the Agent agreed with the Tenant that he agreed he would not find it suitable to move into. The Agent for the Landlord did not refute this statement during the hearing. Furthermore, the Agent testified that the rental unit had been professionally cleaned before the Tenant moved in.

I find the Tenant was led to believe that the rental unit would be cleaned again, or that it had been professionally cleaned, before she would take occupation of it. I find that the rental unit was not cleaned again after the initial viewing until the Tenant engaged the services of a cleaner, as I find the Landlords had insufficient evidence to prove the rental unit had been professionally cleaned before the Tenant moved in.

I find the Landlords breached section 32 of the Act by failing to provide the rental unit in a reasonably clean fashion, suitable for occupation by the Tenant.

I further find that the Tenant relied on the statements made by the Agent for the Landlords that she would be reimbursed for the services of a cleaning company.

Having made the above findings, I must Order, pursuant to section 67 of the Act, that the Landlords pay the Tenant the sum of **\$302.00**, comprised of the cost of cleaning the rental unit and the \$50.00 fee for filing this Application.

### Conclusion

The Landlords breached the Act by not having the rental unit clean for the Tenant. The Landlords did not breach the Act in terms of the security deposit, as they handled the security deposit in accordance with Act.

The Tenant is granted a formal Order for the cost of cleaning and her filing fee for the Application and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, 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: October 09, 2015

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Residential Tenancy Branch

