



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's Application made January 21, 2015: MNSD; MNDC; FF

Landlord's Application made June 16, 2015: MNSD; FF

### **Introduction**

This matter was convened on July 31, 2015, to consider cross Applications for Dispute Resolution. The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks to keep the security deposit in satisfaction of his costs for cleaning the rental unit at the end of the tenancy; and to recover the cost of the filing fee from the Tenant.

On July 31, 2015, the Hearing was adjourned because of service issues. An Interim Decision was issued, which should be read in conjunction with this Decision. The matter was reconvened on November 3, 2015.

The parties gave affirmed testimony.

It was determined that the Landlord re-served the Tenant with his Notice of hearing documents and documentary evidence by registered mail to the Tenant's new address.

### **Issues to be Decided**

1. Is the Landlord entitled to a monetary award for cleaning the rental unit?
2. Is the Tenant entitled to a monetary award for double the amount of the security deposit?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 1, 2014, and ended on November 30, 2014. The Tenant paid a security deposit in the amount of \$435.00 at the beginning of the tenancy.

It was agreed that the Tenant gave the Landlord her forwarding address in writing “in the middle of November”, 2014.

On December 10, 2014, the Landlord returned \$199.47 of the security deposit to the Tenant and retained \$236.25 for the cost of cleaning the rental unit. The Landlord testified that the rental unit was not clean at the end of the tenancy and that he paid to have it cleaned. The Landlord provided a copy of a hand written receipt in evidence, along with photocopies of photographs depicting the rental unit at the end of the tenancy.

The Tenant disputed that the rental unit needed cleaning at the end of the tenancy. She stated that the Landlord broke into the rental unit with his own key, shut off the heat, and threatened the Tenant and her co-tenant. The Tenant stated that she did not give the Landlord permission to keep any of the security deposit. She stated that she could not cash the Landlord’s cheque for \$199.47 because it was in the wrong name.

The Landlord denied the Tenant’s allegations about shutting off the heat or threatening her.

### **Analysis**

#### **Is the Landlord entitled to a monetary award for cleaning the rental unit?**

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the Landlord provided photographs of the rental unit, which show some dirt and hair on the bathroom floor and some dirt on what appears to be baseboards and windows. The photographs are enlarged and not particularly helpful, except to show that there is some dirt over a small area of whatever the Landlord is photographing. The invoice provided by the Landlord indicates that the cleaner charged for a “min 3 hr” at \$75.00 per hour. I find that the photographs do not support that the rental unit required 3 hours to clean. I also find that the hourly rate claimed is not reasonable. However, Tenants are required to leave a rental unit in reasonably clean condition at the end of a tenancy and I am satisfied that some cleaning was required. Therefore, I award the Landlord compensation for one hour of work at the rate of \$25.00 per hour.

The Landlord has been only partially successful in his Application and I find that he is entitled to recover half of the cost of the filing fee from the Tenant, in the amount of \$25.00.

I find that the Landlord has established a total monetary award in the total amount of **\$50.00**.

Is the Tenant entitled to a monetary award for double the amount of the security deposit?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, **a landlord has 15 days** to either:

1. **repay the security deposit in full**, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

It was established that the Landlord received the Tenant's forwarding address approximately two weeks before the end of the tenancy. In this case, the Landlord did not apply against the security deposit or return the security deposit in full within 15 days of the end of the tenancy. Therefore, I find that the Tenant is entitled to double the amount of the security deposit, in the amount of **\$875.00**. I accept the Tenant's undisputed testimony that she has not cashed the Landlord's cheque of \$199.47, and therefore I do not set it off against the Tenant's monetary award.

The Tenant has been successful in her application and I find that the Tenant is entitled to recovery of the **\$50.00** filing fee.

I find that the Tenant has established a monetary award in the total amount of **\$925.00**.

#### Set off of Claims

I hereby set off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant with a Monetary Order in the amount of **\$875.00**.

#### Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$875.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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 20, 2015

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Residential Tenancy Branch

