



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNSD, MNDC, MND, MNR, FF

### Introduction

This hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, alleged damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence or of the landlord's application.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence 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

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?

### Background and Evidence

The landlord stated that the tenant moved into the rental unit in September 2013, with a co-tenant, and that the co-tenant moved out of the rental unit on March 1, 2014. The landlord submitted that there was a tenancy agreement signed between the landlord and this tenant for a tenancy beginning February 15, 2014 and that the tenant vacated the rental unit at the end of April 2015. I was not provided a copy of a written tenancy agreement.

The monthly rent was \$1495.00 and the tenant paid a security deposit of \$750.00, which has not been returned to the tenant.

The landlord's monetary claim is as follows:

May rent	\$1495.00
Carpet costs	\$2546.87
Carpet install	\$600.00
Painting	\$1000.00
Yard work	\$150.00
Cleaning	\$300.00
Cleaning	\$120.00

The landlord and the tenant submitted the following in support of and in response to the landlord's application, respectively:

*May rent-*

The landlord submitted that she suffered a loss of rent revenue for the month following the end of tenancy, May 2015, as the tenant failed to provide proper written notice that she was vacating. The landlord said she received a phone call from the tenant on April 1, 2015 that the tenancy was ending at the end of April.

The landlord confirmed not attempting to re-rent the rental unit as she had decided to sell the property, not wanting to be a landlord anymore.

In response, the tenant submitted that she broke a rib in March and agreed that she did not provide written notice that she was vacating. The tenant submitted further that the landlord's brother was in the rental unit within 3 days of her verbal notice, taking photographs of the rental unit and showing people the property.

*Carpet costs-*

The landlord submitted that the tenant's dog scratched the carpet at the top of the landing and 1 piece had to be replaced. The landlord confirmed that her actual cost was \$1200.00 and that the carpet was installed in 2012. The landlord did not supply a receipt for this actual cost.

In response, the tenant submitted that her dog was kenneled at all times when she was not home and denied that her dog scratched the carpet as he was never left alone, unless kenneled. The tenant submitted that there was another piece of carpet that snagged each time she opened an interior door.

The tenant submitted that she saw a stain when she moved her bed out of the rental unit, and was not noticed when she moved in, as there was no move-in inspection at the beginning of the tenancy.

*Carpet install-*

The landlord submitted that she paid the carpet installer \$450.00.

*Painting-*

The landlord submitted that she agreed the tenant could paint the rental unit, so long as the paint was in neutral colours, which did not turn out to be the case. The landlord submitted that the rental unit required painting at the end of the tenancy.

In response, the tenant submitted the landlord was with her when she picked out the paint, that the landlord paid for the paint, and that she thought the colours she picked out were neutral. The tenant submitted further that she did not remember the landlord saying that the colours had to be neutral.

#### *Cleaning-*

The landlord submitted that the tenant left garbage at the rental unit when she vacated, which had to be removed, and that the rental unit required cleaning. The landlord submitted that she paid a cleaning company \$250.00 to clean.

The landlord submitted that the tenant did not believe the rental unit was perfect when she moved in, but it was the tenant's choice. The landlord confirmed that some of the items were left by the co-tenant, who had vacated earlier.

In response, the tenant submitted that when she moved in, there were 3' feet of garbage piles left and that she did not use the back shed due to garbage. The tenant submitted that she got rid of her garbage and that she and a friend cleaned the rental unit for 15 hours prior to vacating the rental unit and stated that it was possible that she missed cleaning the stove/oven.

The landlord's relevant evidence was a carpet invoice, showing a new carpet install for 3 bedrooms, the upper hall, and stairs, a handwritten note, and digital evidence.

There was no move-in or move-out condition inspection report.

#### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

#### *May rent-*

As to the landlord's claim for loss of revenue, incorrectly called unpaid rent as the tenancy was over at that point, Section 45 (1) of the Act requires a tenant to give written notice to end the month-to-month tenancy at least one clear calendar month before the next rent payment.

In the case before me, as the tenant supplied her notice to vacate by telephone call, I accept that the tenant failed to provide written notice that she was vacating the rental in accordance with the Act. I, however, find the landlord failed to submit sufficient evidence that she took reasonable steps to mitigate her loss of rent revenue. The landlord confirmed that she did not attempt to find a new tenant for the month of May, as she decided to sell the rental unit after this tenancy ended. I find that taking reasonable steps would include, most importantly, attempts to secure a new tenant for the month following the tenancy ending in order to prevent a loss of rent revenue.

As such, as I have found that the landlord has not complied with section 7(2) of the Act, I dismiss the landlord's claim for loss of rent revenue for May 2015.

*Carpet, carpet installation, painting, cleaning, yard work-*

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As to the landlord's claims against the tenant for damage to the carpet, cleaning costs, painting, and yard work, I find a critical component in establishing a claim for damage and cleaning, and the resulting expenses is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, the undisputed evidence is that the landlord failed in her obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's digital evidence was of no probative value as the photographs were taken at the end of the tenancy and in some cases, the shots were of extreme close-up range.

Additionally, when the original co-tenant moved out of the rental unit, that tenancy ended, and a new tenancy began with this tenant on February 15, 2014. I could find no evidence that the landlord attempted to compel an inspection with the vacating co-tenant, and I therefore accept that some of the items left were of the original co-tenant.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenant for carpet, carpet installation, painting, cleaning, and yard work, with the exception of cleaning the stove/oven unit. As there was no particular breakdown of the landlord's cost in having the stove/oven cleaned, I find a reasonable amount to award the landlord the sum of \$50.00.

I grant the landlord a monetary award of \$50.00 for stove/oven cleaning and dismiss the balance of her monetary claim, including a request to recover the filing fee paid for the application. I direct the landlord to retain the amount of \$50.00 from the tenant's security deposit of \$750.00 in satisfaction of her monetary award and order the landlord to return the balance of the tenant's security deposit, or \$700.00, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of the balance of her security deposit of \$700.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, 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, with the exception of \$50.00 for stove/oven cleaning.

The landlord is ordered to return the balance of the tenant's security deposit, immediately, and the tenant is granted a monetary order in the amount of that balance of \$700.00 in the event the landlord does not comply with this order.

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 9, 2015

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Residential Tenancy Branch

