



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The parties exchanged documentary evidence prior to the hearing. Although the landlord's evidence was provided in May, the tenants did not deliver their documentary evidence until October 20, 2015.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is a house in Vancouver. The tenancy began on May 1, 2014 for a fixed term ending April 30, 2015. Rent in the amount of \$2,100.00 was payable of the first of each month. The tenants paid a security deposit of \$1,050.00 at the start of the tenancy. The tenancy ended and the tenants moved out on or about May 1, 2015.

The landlord applied for dispute resolution on May 15, 2015. She claimed a monetary award in the amount of \$1,200.00, however, in a monetary order worksheet submitted on May 19, 2015 she set out claims for the following amounts:

- |  |          |
|--|----------|
| • Rona; keys, battery, thermos:                            | \$54.55  |
| • KJ Carpet, carpet cleaning:                              | \$157.50 |
| • Joy Canada:            estimate – damages/repair:        | \$577.50 |
| • Joy Canada:            Receipt repairs/damage completed: | \$467.66 |
| • (name) T.L,    additional cleaning, house:               | \$50.00  |

Total: \$1,307.21

The landlord testified that there was a move in condition inspection performed when the tenancy began, but the tenants did not attend the move-out inspection.

The landlord testified that the tenants failed to return keys and returned a remote door opener with dead batteries; she claimed \$54.55 for the cost of keys and batteries for the remote. The landlord said that the tenants failed to clean the carpets at the end of the tenancy. She claimed \$157.50 for the cost of carpet cleaning.

The landlord claimed amounts as set out in an invoice from a contractor for cleaning and debris removal in a bathroom, damage to closet doors in two bedrooms, cleaning of a basement shower, the replacement of a damaged thermostat, a labour charge for having a key cut and for labour to repair damaged blinds.

The landlord also submitted a quotation for other amounts claimed. She claimed the sum of \$200.00 for water damage in the front entrance. She blamed the problem on the tenants' failure to notify her of water leak that caused the damage. She claimed the sum of \$200.00 for the cost to perform weeding in the back yard and \$150.00 for the cost to remove garbage left in the back alley way at the end of the tenancy. The landlord claimed a further \$50.00 for additional cleaning performed by T.L., her agent.

The tenants disputed most of the landlord's claims. They denied that they failed to attend a move-out condition inspection. The tenants said they attempted to re-schedule the inspection, but they attended at 10:30 on May 1, 2015 as originally scheduled. The tenant said that he phoned the landlord, and was told that she was not able to arrive in time to meet. The tenants did not meet the landlord and they said the landlord failed to give any further notice to schedule a move-out inspection. The tenants submitted that the landlord's right to retain the security deposit was extinguished due to the failure to perform a move-out condition inspection.

The tenants testified that during the tenancy the landlord agreed to reimburse the tenants the sum of \$8.61 for a part purchased to repair a toilet. The tenants said that the landlord also agreed to pay the tenants \$50.00 as compensation for damage to the tenants' vegetable garden caused by workers hired by the landlord to perform yard work at the rental property.

The tenants said that they agreed with the landlord's claim for carpet cleaning in the amount of \$157.50 and they sent the landlord a cheque in the amount of \$98.81, which

represented the amount for carpet cleaning less the sum of \$58.61 which the landlord agreed to pay for the toilet part and garden compensation. (Based on the tenants' calculation, the cheque amount should have been for \$98.89).

The tenants disputed almost all of the landlord's other claims, although they did agree that they failed to return one key.

With respect to water leakage in the front entrance, the tenants said that the water leakage in the front entrance pre-dated the commencement of the tenancy and it was recorded on the move-in inspection. The landlord reported further water leakage when it occurred during the tenancy, but it was not due to any fault or neglect on the part of the tenants.

The tenants disputed the quotation for weeding. They said that both front and back yards were overgrown with weeds when they moved in. The tenants did perform yard work and weeding; they denied that the yard was in worse condition at move out than it was when they moved in. The tenants submitted that the landlord provided only a quotation and failed to verify the actual cost of the weeding.

The tenants disputed the claim for garbage removal. They acknowledged that they left a barbeque in the back alleyway, which they picked up, but they submitted that the other items shown in the landlord's photograph, were items left in the rental unit by previous tenants. The tenants again submitted that the landlord's evidence consisted of a quotation only.

The tenants disputed the landlord's claims for additional cleaning costs. The tenants challenged the landlord's photographs of the bathrooms on the basis that they appear to have been taken before the tenants had moved out, based on the presence of a bathmat and a towel in the pictures; these were items removed by the tenants at the end of the tenancy. The tenant denied that the cleaning was necessary, but they also submitted that the charges were excessive and exceeded the labour rate of \$25.00 specified in the tenancy agreement.

The tenants denied responsibility for damaged closet doors. They said there were defects noted on the move in report and they challenged some of the landlord's photographs; one picture showed closet doors with numerous items around the doors. The tenants denied leaving any items and questioned when the photo was taken. The tenants submitted that one of the pictures simply showed that the sliding closet doors needed to be replaced on the closet tracks and there was no indication of any damage.

The tenants denied damaging the thermostat. They said it was working throughout the tenancy and had it stopped working they would have reported it to the landlord. The tenants also denied damaging a window blind.

### Analysis

The landlord bears the burden of proving on a balance of probabilities that the tenants caused damage to the rental unit and that they failed to leave the rental unit reasonably clean. There was no move-out inspection conducted. It appears that there was some confusion about the time that the parties would meet to conduct the inspection. I accept the tenant's testimony that he called the landlord and she said she would be late to arrive. There is no evidence to show that proper efforts were made to re-schedule the inspection. The landlord's photographic evidence is in black and white and of poor quality; it is of little assistance in determining whether the rental unit was reasonably clean at the end of the tenancy, or whether there was damage caused by the tenants

Apart from the amount claimed for carpet cleaning acknowledged by the tenants, I find that the landlord has failed to provide sufficient evidence to establish that the tenants are responsible for any of the other claims advanced by the landlord. The landlord did not dispute the tenants' testimony that there was an agreement that the tenants would be paid the total sum of \$58.61 (\$8.61 for a toilet part and \$50.00 for compensation for garden damage). The tenants apparently sent a cheque to the landlord, but I do not have evidence to establish whether it was received or cashed so I have excluded it from my calculations in making this decision. If in fact the cheque was cashed, the parties may make the necessary adjustments between themselves.

I find that the landlord is entitled to recover the sum of \$157.50, less the sum of \$58.61 agreed to be paid to the tenants. The remainder of the landlord's claims are dismissed without leave to reapply, based on my finding that the landlord has failed to prove those claims on a balance of probabilities. Because the landlord has been largely unsuccessful in this proceeding, I decline to award the filing fee for this application. The amount awarded to the landlord is the sum of \$98.89.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed without leave to reapply, save for the award of \$98.89, it is appropriate that I order the return of the balance of the tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of \$951.11. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord has been awarded the sum of \$98.89; all other claims have been dismissed and the tenants have been granted a monetary order in the amount of \$951.11.

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: December 07, 2015

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Residential Tenancy Branch

