



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenants had filed for return of their security deposit. The landlords applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants as claimed?
2. Disposition of the security deposit.

### Background and Evidence

The fixed term co-tenancy commenced on October 1, 2014 and was set to expire on September 30, 2015. The tenants paid a security deposit of \$700.00. A move-in inspection report was signed by both the caretaker and the female tenant on September 10, 2014.

The tenants vacated the rental unit on April 30, 2015 and the rental unit was re-rented effective May 1, 2015.

The landlord prepared a move-out inspection report on April 30, 2015; however, it was not signed by the tenants. The parties were largely in dispute as to the events that took place on the last day of tenancy as described below.

The landlord submitted the tenants refused to sign the move-out inspection report. The tenants submitted that a report was presented to them.

The caretaker testified that the move-out inspection was scheduled with the tenant over the telephone for 10:00 a.m. on April 30, 2015 but when the caretaker attended the unit the tenants had not finished moving out and cleaning. The caretaker came back at noon and the tenants were still not ready for the move-out inspection. The caretaker claimed that she began the

inspection and tried to get the tenants to participate but the tenants refused. The caretaker also claimed that the male tenant refused to give back the keys and the remote to the unit unless the caretaker would meet him privately in her office but she refused as she was uncomfortable meeting him alone in her office.

The tenants denied that the caretaker set up the move-out inspection for a 10:00 a.m. on April 30, 2015. They were of the position that the inspection was scheduled for 1:00 p.m. since they had the right to be there until 1:00 p.m. The tenants submitted that they tried participating in the move-out inspection but that the caretaker told them to leave her alone. The tenants submitted that the caretaker was acting angrily toward them.

The caretaker explained that there was very little time between this tenancy and the start of the next tenancy that was set to commence the next day and a lot of cleaning had to be accomplished by then.

It was undisputed that the tenants called the police and that while the police were in attendance the keys and remote were given to caretaker.

#### **Tenants' application**

The tenants requested return of their security deposit. The tenants acknowledged that they did not provide the landlord with a forwarding address in writing before filing their application.

#### **Landlord's application**

The landlords requested authorization to retain the tenant's security deposit in partial satisfaction of the amounts claimed against the tenants.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

#### *Cleaning -- \$180.00*

The landlord submitted that the rental unit required a significant amount of cleaning after the tenants left including removal of dried on mucus that was on the walls and the windows that had to be chiselled off. The landlord pointed to the photographs in support of its position. The landlord's claim is calculated as 12 hours at \$15.00 per hour that was paid to the caretaker.

The tenants submitted that, overall, the rental unit was left clean; however, there were some areas that still required more cleaning. The tenants submitted that it is customary for the landlord to have to do so cleaning between tenancies. The tenants also submitted that the fridge and oven were dirty at the beginning of the tenancy.

#### *Carpet cleaning -- \$162.75*

The landlord submitted that carpet cleaning is always done between tenancies and that the tenancy agreement requires the tenants to professionally clean the carpets at the end of the

tenancy. Since the tenants did not have the carpets cleaned the landlord had it done and seeks to recover the cost to do so from the tenants.

The tenants stated that they vacuumed the carpets.

*Window covering cleaning -- \$45.00*

The landlord submitted that the window coverings were dirty, stained and greasy.

The tenants acknowledged that they did not have the window coverings cleaned.

*Broken light fixture and new light bulbs -- \$125.00 and \$25.00*

The landlord submitted that a new light fixture had to be installed because the tenants broke the one that was in the kitchen. With a different light fixture in place the landlord had to purchase new light bulbs to fit the new fixture. The landlord acknowledged that the broken light fixture was approximately 16 – 17 years old and had florescent tubes.

The tenants acknowledged that they broke the light fixture and were agreeable to being held responsible for its replacement.

*Lease break fee – \$300.00*

The landlord is seeking to recover liquidated damages of \$300.00 from the tenants because they ended the tenancy before the expiration of the fixed term. The landlord pointed to the liquidated damages clause in the tenancy agreement in support of this claim.

The tenants acknowledged that they are liable to pay the landlord for the lease break fee under the tenancy agreement.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

**Tenants' application**

I find the tenants' application seeking return of their security deposit was premature. Pursuant to section 38 of the Act, in order for a tenant to seek return of the security deposit from the landlord the tenant must first provide the landlord with forwarding address in writing. It was undisputed that the tenants did not do so before they filed their application. Accordingly, I dismiss the tenant's application and I shall consider disposition of the security deposit under the landlord's application since the landlord requested authorization to retain it.

**Landlord's application**

The landlord's application largely pertains to claims for damage and cleaning costs. Portions of the landlord's claims were in dispute. Below, I provide findings and reasons with respect to the evidence pointing to the condition of the rental unit.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Act and Regulations is the best evidence of the condition of the rental unit in a dispute resolution proceeding unless there is a preponderance of evidence to the contrary.

In this case, I was presented a move-in inspection report executed by both the landlord and the tenant and I accept that it is the best evidence of the condition of the rental unit at the start of the tenancy.

In contrast, the move-out inspection report was not signed by the tenants and I was presented disputed verbal testimony as to when the inspection was scheduled to take place. Unfortunately, the caretaker did not document or give the tenants any written notice to confirm that the move-out inspection was to be held at 10:00 a.m. as she claimed. I was also provided disputed verbal testimony as to whether the tenants tried to participate in the move-out inspection and whether the caretaker presented a move-out inspection report to the tenants. Given the disputed versions of events as to what transpired on the last day of tenancy and in the absence of any evidence to corroborate either parties' version, I make no finding as to whether one of the parties extinguished the right to claim the security deposit. Further, I do not consider the move-out inspection report to be the best evidence as to the condition of the rental unit at the end of the tenancy. Rather, I have considered it to be one form of evidence along with other evidence including: the verbal testimony of the parties; the receipts provided by the landlord; and, the photographs provided by the landlord.

Below, I provide my findings and reasons with respect to each of the items for which the landlord seeks compensation from the tenants.

### *Cleaning*

Under the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy.

From the photographs provided to me I note the following areas were dirty and required additional cleaning: bathroom mirror; oven; fridge; bathroom toilet, floor and baseboards; drawer or cupboard; wall and baseboard; range fan; bathtub; countertop; concrete floor; heater; walls with scuffs and children's writing; kitchen sink; and other areas. I find the culmination of all of these areas does not meet the tenants' obligation to leave the rental unit reasonably clean.

It is important to note that there are not exemptions to a tenant's obligation to leave a rental unit reasonably clean. Accordingly, the tenants' submission that the fridge and oven were dirty at the start of the tenancy does not exempt them from leaving the fridge and oven reasonably clean at the end of the tenancy.

I also find the landlord's request to recover \$180.00 for cleaning to be within reason and I award that amount to the landlord.

*Carpet cleaning*

The landlord submitted that carpets are cleaned between every tenancy and pointed to a term in the tenancy agreement as the basis for seeking carpeting cleaning costs from the tenants. However, it is important to note that in order for a term in a tenancy agreement to be enforceable it must not contradict the requirements of the Act.

Under the Act, a tenant is required to leave a rental unit “reasonably clean”. Accordingly, the landlord must establish that the carpets were not left reasonably clean and not merely point to the tenancy agreement or refer to the landlord’s policies as justification to recover an amount from the tenant. Residential Tenancy Branch Policy Guideline 1 provides policy statements with respect to a tenant’s obligation to leave a rental unit reasonably clean and undamaged. It provides that a tenant is generally held responsible for cleaning the carpet where the tenancy was greater than one year; the tenant negligently soiled the carpeting; or, the tenant smoked or had uncaged pets in the unit.

In this case, the tenancy lasted less than one year and the landlord did not present evidence to show the carpets were dirty; the tenants smoked or had uncaged pets in the rental unit.

In light of the above, I find I am unsatisfied that the carpet cleaning was required because it was dirty and I find the term in the tenancy agreement exceeds the tenant’s obligations under the Act and I do not enforce it. Therefore, I dismiss the landlord’s request to recover the cost of carpet cleaning from the tenants.

*Window covering cleaning*

As indicated above, I find the tenant’s obligation to clean the window coverings is dependent upon whether they failed to leave them reasonably clean at the end of the tenancy as opposed to the term in the tenancy agreement that requires professional cleaning without any regard for the length of tenancy or level of cleanliness. As such, I do not uphold the term in the tenancy agreement that requires the tenants to have the window coverings cleaned.

The landlord did submit; however, that the window coverings in the rental unit were dirty and greasy at the end of the tenancy. The tenants did not deny those submissions and acknowledged they did not clean the window coverings. Therefore, I accept the undisputed testimony of the landlord that the window covering were not left reasonably clean and I grant the landlord’s request to recover \$45.00 for cleaning them.

*Light fixture and new light bulbs*

The tenants acknowledged responsibility for breaking the kitchen light fixture. However, I find the landlord’s request to recover the entire cost of replacement to be excessive considering the former light fixture was 16 – 17 years old. In other words, to award the landlord the full replacement cost would improve the landlord’s position as it would give the landlord the benefit

of a new light fixture in place of one that was several years old and of an older style at the expense of the tenants.

Since awards for damages are intended to be restorative, where an item has a limited useful life, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the light fixture I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* which provides that light fixtures have an average life of 15 years.

Since the light fixture was more than 15 years old I find its value was very little. However, in recognition that the former light fixture was operational and the tenants broke it, I find it appropriate to grant a nominal award to the landlord of \$25.00.

*Lease break fee (liquidated damages)*

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$300.00 from the tenants.

**Filing fee, Security deposit and Monetary Order**

Since the landlord's claim was largely successful, I award the landlord recovery of the filing fee.

I authorize the landlord to deduct the following sum from the tenants' security deposit in satisfaction of the amounts awarded to the landlord with this decision:

Cleaning	\$ 180.00
Window covering cleaning	45.00
Broken light fixture and light bulbs	25.00
Liquidated damages	300.00
Filing fee	<u>50.00</u>
Authorized deduction from security deposit	\$ 600.00

In accordance with Residential Tenancy Policy Guideline 17: Security Deposit and Set-Off, I order the landlord to return the remainder of the security deposit of \$100.00 to the tenants without delay. Provided to the tenants is a Monetary Order in this amount to serve and enforce upon the landlord if necessary.

Conclusion

The landlord has been authorized to deduct \$600.00 from the tenant's security deposit and the landlord is ordered to return the balance of \$100.00 to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlord as necessary.

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 09, 2015

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Residential Tenancy Branch

