



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on, or about, July 01, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on July 09, 2015 were personally delivered to the Landlord's mail box. The Landlord acknowledged receipt of these documents. I

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for damage to the rental unit.

The Landlord stated that on November 20, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch on November 13, 2015 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents on, or about, November 30, 2015 and they were accepted as evidence for these proceedings. The Tenant declined the opportunity to request an adjournment as he is prepared to respond the Landlord's claims at this hearing.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Is the Landlord entitled to compensation for damage to the rental unit?

## Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant lived in the lower portion of this residential complex;
- the Tenant shared the yard with the occupants of the upper portion;
- the Tenant paid a security deposit of \$450.00;
- this tenancy ended on April 01, 2015;
- the Tenant provided a forwarding address, in writing, sometime in May or June of 2015;
- the Tenant did not authorize the Landlord to retain the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord is seeking compensation, in the amount of \$89.25, for cleaning the carpet. The Landlord and the Tenant agree that the carpet was not cleaned at the end of the tenancy; that they agreed that the Landlord would arrange to have the carpets cleaned; and that the Tenant would pay for the cost of the cleaning. The Landlord submitted an invoice for cleaning the carpet, in the amount of \$89.25.

The Landlord is seeking compensation, in the amount of \$360.40, for removing property left in the yard of the rental unit. The Landlord stated that she paid a company \$260.00 plus related dump fees of \$100.48, for disposing of garbage left in the yard, including three couches and miscellaneous garbage.

The Tenant stated that the only personal property/garbage left in the yard that belonged to him was a canopy for a truck. He stated that there was only one couch left in the yard at the end of the tenancy, which did not belong to him, and that none of the garbage left in the yard belonged to him or his guests.

The Landlord submitted an invoice for disposal costs, in the amount of \$260.00, and receipts for dump fees in the amount of \$100.40.

The Landlord submitted a third receipt, in the amount of \$30.40, which she stated relates to the cost of applying silicone to the bathtub. The Landlord has not applied for compensation for repairing the tub and therefore this receipt is not relevant to these proceedings.

## Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to

comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

When making a claim for compensation for damage the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37 of the *Act* when they did not clean the carpet at the end of the tenancy. I therefore find that the Tenants must pay the Landlord \$89.25 for cleaning the carpet.

I find that the Landlord submitted insufficient evidence to establish that all of the garbage/personal items left in the yard at the end of the tenancy belonged to the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's statement that none of the property was his, with the exception of a truck canopy, or that corroborates the Landlord's submission that all of the garbage belonged to the Tenant. I therefore find that the Tenant is not responsible for the cost of disposing all of the property left in the yard.

As the Tenant acknowledged leaving a truck canopy in the yard at the end of the tenancy, I find that he must compensate the Landlord for disposing of this item. On the basis of the evidence that shows the Landlord paid \$360.40 for removing all of the garbage, including three couches, I find it reasonable to award compensation of \$100.00 for removing the canopy,

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to recover the fee paid to file his Application.

### Conclusion

The Tenant has established a monetary claim of \$950.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

The Landlord has established a monetary claim of \$189.25 in compensation for cleaning the carpet and disposing of a truck canopy.

After offsetting these two awards I find the Landlord owes the Tenant \$760.75 and I am

issuing a monetary Order in that amount.

In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province 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: December 08, 2015

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Residential Tenancy Branch

