



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bristol Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MND, MNSD

### Introduction

This is an application brought by the Landlord requesting a Monetary Order in the amount of \$460.00 and requesting an Order to retain a portion of the security deposit towards the claim. The applicant is also requesting an Order for recovery of the \$50.00 filing fee.

Some of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issues are whether or not the applicant is established monetary claim against the respondent and if so in what amount, and whether or not the applicant has the right to retain the security deposit towards any claim established.

### Background and Evidence

The applicant testified that he has no direct evidence as he was not with the company at the time that the respondent was vacating the rental unit, however according to the file, the tenant was given three opportunities to participate of a moveout inspection as follows:

- May 28, 2015 notice was posted on the tenant's door requesting that the tenant participated moveout inspection.

- May 31, 2015 the second notice was posted on the tenant's door requesting that the tenant participated moveout inspection.
- June 2, 2015 a Notice of Final Opportunity to Schedule a Condition Inspection was posted on the tenant's door.

The applicant further testified that he understands that the tenant failed to respond to any of the notices and therefore the inspection was done in the tenant's absence.

The applicant further testified that at the end of the tenancy the rental unit was left in need of the following cleaning and repairs:

Oven cleaning	\$50.00
Carpet cleaning	\$75.00
Wall repair	\$100.00
Flea spray	\$135.00
Curtain cleaning	\$65.00
One day overholding	\$30.00
One missing key	\$5.00
Total	\$460.00

The tenant testified that at no time did he ever find any notices for a moveout inspection posted on his door and he believes that they have fabricated this portion of the claim.

The tenant further claims that the rental unit was left completely clean at the end of the tenancy and therefore no further cleaning was required except for perhaps cleaning of the curtain.

The tenant also testified that the pets never had fleas and there were no fleas in the rental unit at the end of the tenancy.

The tenant also testified that they did not over hold and were completely out of the rental unit on May 31, 2015 and all keys were returned.

In response to the tenant's testimony the landlord testified that, as stated before, he has no direct knowledge and therefore can only go by what is in the tenants file. The landlord did testify however that he could find nothing in the file with regards to a requirement to have a property sprayed for fleas.

The landlord further testified that there is no one available to give any direct evidence about the service of any notices of inspection because the parties are no longer with the company.

### Analysis

It is my finding that the landlords have not met the burden of proving that the tenant was given any notice requesting a moveout inspection be done. The landlord has no direct evidence of any notices having been posted, and the tenant has testified that there were no notices posted on his door regarding a moveout inspection.

Sections 35 and 36(2) of the Residential Tenancy Act state:

**35**(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

**36**(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

Therefore since, in this case, the landlord is not met the burden of proving that they complied with section 35(2), the landlords right to claim against the security deposit or pet deposit is extinguished.

Further the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

In this case, since the landlord did not have the right to claim against the security deposit for damages the landlord was required to return the deposit within 15 days. This tenancy ended on May 31, 2015 and the landlord had a forwarding address in writing by July 10, 2015, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

The landlord did return the full security deposit within the 15 day time limit, but the landlord only returned \$2.50 of the pet deposit and therefore the landlord is required to pay double the pet deposit of \$462.50 for a total of \$925.00, less the \$2.50 already returned for a balance of \$922.50.

The landlord however has also filed a monetary claim however it is also my finding that the landlord has not met the burden of proving any the monetary claim.

As stated earlier the landlord has no direct evidence and is relying solely on the tenants file to pursue this claim, however there is insufficient evidence in the file to support any of the landlords claim. The tenant claims that the rental unit was left clean and with no damages, other than a dirty curtain, and the small hole that he put in the wall to put power cord from one room to another; however in the absence of any repair invoices or cleaning invoices, it is my decision that I will not allow any of the landlords claim for damages or cleaning.

The landlord's full claim is therefore dismissed and I have issued an Order for the landlord to pay \$922.50 to the tenant.

### Conclusion

The landlords application has been dismissed in full without leave to reapply and a Monetary Order has been issued to the tenant for recovery of double his pet deposit less the \$2.50 which is already been returned by the landlord.

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: January 11, 2016

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Residential Tenancy Branch

