



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

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

The evidence was discussed and each party confirmed receiving the other's evidence in advance of the hearing.

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

I have reviewed all oral, photographic, 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 tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

Although the landlord submitted that there was a written tenancy agreement, a copy was not provided into evidence. The undisputed evidence showed that this 1 year, fixed term tenancy began August 1, 2014, ended on July 1, 2015, monthly rent was \$1200.00, and the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00, both of which have been retained by the landlord.

The landlord lived in the upper suite and the tenants resided in the lower suite in the residential property.

The landlord's monetary claim showed various amounts claimed. In explanation, the landlord's application made on July 24, 2015, listed a claim of \$6586.00, without providing a breakdown as required by section 59 of the Act. When the landlord began submitting evidence for her application on December 21, 2015, a monetary order worksheet showed a monetary claim of \$4281.22, and additional evidence received on December 22, 2015, another monetary order worksheet showed a monetary claim of \$579.17.

I determined that the landlord's differing submissions are unclear and confusing to me and to the respondents/tenants, and as the landlord/applicant may not amend a monetary claim through evidence, the hearing proceeded on the landlord's monetary claim of \$4281.22. This claim consisted of \$131.75 for flea treatment, \$3350.00 for a carpet replacement, \$744.12 for her dog's surgery, and \$55.35 for her dog's flea treatment for her dog's bedding.

In support of her application, for a flea treatment cost, the landlord submitted her dog entered the lower suite one time and contracted fleas. The landlord submitted that her dog was an indoor pet and the only source of fleas would have been in the rental unit. The landlord submitted further that her evidence of the invoice shows the source of fleas was the rental unit.

In conjunction with acquiring fleas, the landlord submitted that the fleas concentrated in one area on her dog, which required surgery and associated costs. The landlord submitted the surgical records and proof of treatment costs.

As to the carpet replacement, the landlord submitted that the carpet had to be replaced, due to the cat urine and odour in the rental unit left from the tenants' cats. The landlord submitted that the urine smell was overwhelming and that the carpet could not be

salvaged. The landlord provided a copy of the carpet replacement invoice, along with copies of photographs showing the claimed damage to the underlay.

In response to my question, the landlord confirmed that she had a previous tenant who had a pet. The landlord submitted that there was a move-in condition inspection report, but it was not provided and confirmed there was no move-out condition inspection report.

#### *Tenants' response-*

The tenants submitted that their pets never had fleas or that there were fleas in the rental unit. The tenants pointed out that the landlord's dog's surgery was for a lumpectomy, not flea related.

As to the carpet damage, the tenants submitted further that their pets did not damage or urinate on the carpet as the cats were fully litter box trained and their ferrets were completely caged.

The tenants submitted photographs of the rental unit from the beginning of the tenancy and from the end of the tenancy, showing a clean rental unit. The tenants submitted that it was odd that the landlord ripped up the carpet to show alleged damage and denied their car was ever in the bedroom in which the landlord claimed was damaged.

The tenants denied having a move-in or move-out inspection, and that is why they took photographs of the rental unit.

#### 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. In this case, the landlord has the burden of proof to substantiate her claim on a balance of probabilities.

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 tenants for damage to the carpet and flea treatment, I find a critical component in establishing a claim for damage, 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, I do not accept the landlord's submission that there was a move-in inspection or a report, as none was submitted and the tenants denied a move-in inspection. As such, I find 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 tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the landlord's photographs taken at the end of the tenancy were of no probative value as there were no corresponding photographs from the beginning of the tenancy and as there was no proof of the dates the photographs were taken or if the tenants were present.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants for damage to the carpet or for a flea treatment.

Further, although the landlord claimed that her dog contracted fleas in the rental unit upon one visit, I do not accept that the tenants are responsible or that the rental unit was the source of the fleas. Although the landlord submitted that her dog was an indoor dog, while the dog may generally stay inside, I further do not accept that the dog, which from the photographs appear to be a large dog, never goes outdoors.

Overall, I do not accept that the tenants are responsible for the surgery on the landlord's dog or that the surgery was a foreseeable event.

Due to the above findings, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants and therefore dismiss her application, without leave to reapply.

As I have dismissed the landlord's monetary claim against the tenants, I order the landlord to return the tenants' security deposit of \$600.00 and their pet damage deposit of \$600.00, or \$1200.00 in total, immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$1200.00, comprised of their security deposit of \$600.00 and pet damage deposit of \$600.00, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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.

The landlord is ordered to return the tenants' security deposit and pet damage deposit, immediately, and the tenants are granted a monetary order in the amount of those deposits in the amount of \$1200.00 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: January 11, 2016

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Residential Tenancy Branch

