



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for: a monetary order for damage or loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to the return of his deposit? Is the tenant entitled to an order that the landlord comply with the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?



### Background and Evidence

This tenancy began on August 1, 2014 as a one year fixed term tenancy. The rental amount of \$1500.00 is payable on the first of each month. The tenancy ended on July 20, 2015 when the tenant vacated the rental unit. Both parties agreed in their testimony that the tenant did not return the fob for the garage at the rental unit premises. The landlord testified that she continues to hold a \$750.00 security deposit paid by the tenant on July 28, 2014.

The landlord sought \$899.75 for damage to the rental unit at the end of this tenancy as a result of the actions of the tenant. The landlord applied to retain the tenant's security deposit towards the amount sought as well as recover the filing fee for this application. The landlord testified that the rental unit was unclean when the tenant vacated. She submitted photographs to show the inside of the rental unit including marked glass stove top, a window sill, a dirty stove, and a frayed carpet. She also submitted a letter from an individual who was present at the condition inspection at move-out. That letter stated that the corner of the bedroom carpet was torn up, there was a significant dent in the living room window sill, the microwave and oven were quite dirty and the stove tops had markings on the burners. The letter writer also stated that the carpets did not appear to have been cleaned.

The landlord submitted receipts with respect to the cleaning of the rental unit in the amount of \$100.00. She submitted a copy of a letter from the strata corporation manager advising that the tenant did not pay a \$150 moving fee and that she would be charged for that fee. She submitted a letter from the strata charging \$100.00 for a garage remote replacement. She submitted a receipt for carpet cleaning in the amount of \$93.54 as well as email correspondence from the tenant advising that he would return the garage entrance key fob/opener.

The tenant states that he cleaned the oven inside and out. He testified that the carpets were clean and that the landlord pulled them up entirely because of a deficiency/replacing them anyways. The tenant submits that most of the items raised are as a result of wear and tear over the course of a one year tenancy. He acknowledges that he failed to return the garage key fob/opener.

The tenant sought an amount double his security deposit totalling \$1500.00 as well as recovery of the filing fee for this application. The tenant testified that he provided notice to end the tenancy in September 2016 claiming he was unaware of his obligation to provide the landlord with 30 days' notice to end tenancy. With respect to his forwarding address, he testified that he provided the address to the landlord on the day of his move



out, July 20, 2015. A copy of the condition inspection report for this move-out dated July 18, 2015 shows the tenant's forwarding address in the appropriate box on the form.

### Analysis

The landlord has applied for a monetary order pursuant to section 67 of the *Act*: if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order compensation to the affected party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once the landlord has established the loss and the responsibility of the tenant, she must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has provided evidence of damage in the form of photographs to show the inside of the rental unit at the end of the tenancy. Those photographs showed a glass stove top with some marks, a dirty stove, and a frayed carpet. I find that the photographs show a unit that appears to have been cleaned but for the stove. The witness letter described a dirty microwave as well. With respect to the carpet, I note that the condition inspection report and the witness letter indicate that the carpet is "pulling up" and that the carpet was not cleaned. However, in the same portion of the condition inspection report, the landlord indicates "check with strata" and provides no further information or indication to the tenant that the fraying is the tenant's responsibility. The landlord submitted that the photographs show a window sill with marks caused by the tenant. The condition inspection report refers to marks on the window ledge trim. However, the tenant denies damage to the window sill and I find the photographs do not clearly show damage. The witness letter described a "significant dent" in the window sill. However, I do not find that the landlord has provided sufficient evidence to suggest that this damage to the window sill was caused by the tenant and that it was not as a result of normal wear and tear.

I accept the testimony and documentary evidence of the landlord with respect to the cleanliness of the rental unit and I find that the landlord is entitled to her reasonable cleaning costs (\$100.00) in that the kitchen appears to have been left less than clean. I find that the landlord is entitled to the cost of carpet cleaning (\$93.45) as the carpets were clearly very dirty at the end of this tenancy according to the photographic evidence submitted. I do not find that the landlord is entitled to recover the cost of repairing the carpet or the windowsill in all of the circumstances.



The landlord submitted a copy of a letter from the strata corporation manager advising that the tenant did not pay a \$150 moving fee and that she would be charged for that fee. She submitted a letter from the strata charging \$100.00 for a garage remote replacement. The tenant acknowledged that he did not pay a moving fee (that is outlined in his tenancy agreement) and that he did not return the garage remote. Therefore, with the undisputed testimony and documentary evidence of the landlord, I find the landlord is entitled to recover these costs as a direct result of the actions of the tenant. As the landlord has shown sufficient evidence that she has paid these invoices, she is entitled to \$250.00 for strata costs paid with respect to the end of this tenancy.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address in writing within the condition inspection move-out report form on July 18, 2015. The landlord had 15 days after July 18, 2015 to take one of the actions outlined above. The landlord applied to retain the security deposit on February 19, 2016.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or pet damage) deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant testified that he did not agree to allow the landlord to retain any portion of his security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of his security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenant's deposit, she did so more than 6 months after the deadline to make such an application. Given that the landlord failed to return the deposit or apply to retain the deposit within the required timeline, I find that the tenant is entitled to a monetary order including \$750.00 for the return of the full amount of his security deposit.



The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed, sworn evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution within the timeline to do so nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Despite the extinguishment of the landlord's right to retain the security deposit in this matter, the landlord is entitled to apply for a monetary order with respect to damages pursuant to Residential Tenancy Policy Guideline No. 17.

*If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.*

I have found that the landlord is entitled to \$443.45 for cleaning of the rental unit and the carpets as well as the moving fee and cost to replace the garage fob.



Each party are entitled to monetary compensation as follows,

	<b>Item</b>	<b>Amount</b>
Tenant	Return of Security Deposit	\$750.00
Tenant	Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	750.00
Tenant	Rental Unit Cleaning	(100.00)
Landlord	Carpet Cleaning	(93.45)
Landlord	Strata Moving Fee	(150.00)
Landlord	Garage Fob/Key Fee	(100.00)
	<b>Total Monetary Order to Tenant</b>	<b>\$1056.55</b>

Given that both parties have been successful in their own applications, I find each party is responsible for their own filing fee.

### Conclusion

I issue a monetary Order in favour of the tenant in the amount of \$1056.55.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: April 13, 2016

---

Residential Tenancy Branch