



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AKAL DEVELOPMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD (Tenant's Application)  
                             MNDS,

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed October 8, 2015 the Tenant sought a Monetary Order for return of double the security deposit paid. In the Landlord's Application for Dispute Resolution filed October 21, 2015 the Landlord sought a Monetary Order for damage to the rental unit and unpaid rent or utilities, authority to retain the security deposit and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Is the Landlord entitled to a Monetary Order from the Tenant?
3. Should the Landlord recover the fee paid to file their application?

### Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement. The Tenant also testified as to the terms of the tenancy as follows. The tenancy began on January 1, 2013. The Tenant testified that she paid a total of \$464.50 in deposits including a security deposit of \$364.50 at the beginning of the tenancy and then a further \$100.00 pet damage deposit approximately one or two months after the tenancy began as the Tenant obtained a cat at that time.

The Tenant testified that she vacated the premises on May 31, 2015. The Tenant confirmed there was a move out condition inspection report conducted, but no move in condition inspection report. The Tenant confirmed that she was only 18 years old at the time the tenancy began and her social worker attended with her at the time.

The Tenant testified that when she dropped off her keys she gave the manager her forwarding address in writing. She stated that she then provided it again approximately two months later as the Landlord had not returned her deposit.

Introduced in evidence was a letter dated May 6, 2016 wherein the manager, C.Y. confirmed receipt of the Tenant's forwarding address in writing.

In response to the Landlord's monetary claim, the Tenant stated as follows:

- there was a dent in the wall from her couch, but it was not a hole;
- she did forget to clean the inside of the stove;
- she did not repair the shelf, as the damage was done by a worker hired by the Landlord;
- her friends' mom washed all the windows when she moved out; and,
- the dishwasher was leaking, but she barely used it as she lived alone and hand washed her dishes. She said it started leaking about two months before she moved out and she told the Landlord about this and they did not fix it.

The Landlord testified as follows.

He confirmed that he was not there when the move in condition inspection was conducted and stated that it was done by his caretaker, R. (he claimed he did not remember the caretakers' last name).

The Landlord testified that the Tenant did not pay a pet damage deposit. He stated that it was their practice to only charge for big dogs, not cats and as the Tenant had a cat he would not have requested a pet damage deposit for the cat.

The Landlord also stated that the manager who wrote the letter regarding the forwarding address, C.Y., was terminated for cause. He stated that he did not know how the Tenant came about this letter as it was his information that the Tenant did not give a forwarding address in writing.

The Landlord confirmed he was seeking the sum of \$1,000.00 for the following:

Rent for June 2015	\$725.00
<ul style="list-style-type: none"> <li>• Repair and cleaning bill</li> <li>• repair hole in living room and paint</li> <li>• clean oven</li> <li>• Clean windows and balcony</li> <li>• Repair dishwasher</li> </ul>	\$275.00
<b>TOTAL</b>	<b>\$1,000.00</b>

In reply the Tenant stated that the rent was \$715.00, not \$725.00 as the additional \$10.00 was parking.

### Analysis

I will first deal with the Tenant's claim for return of double her deposits paid.

Section 38 of the *Residential Tenancy Act* provides as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she paid both a security deposit and pet damage deposit for a total of \$464.50 in deposits. I prefer her evidence over the Landlord's in this regard as he admitted he was not involved at the beginning of her tenancy.

I also accept the Tenant's evidence that she provided the Landlord with her forwarding address in writing. Introduced in evidence was a letter dated May 6, 2016 written by the building manager, C.Y., signed by the Tenant and a witness M.M. In this letter C.Y. confirms that the Tenant gave more than a month's notice of her intention to end the tenancy and provided her forwarding address in writing.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

I also accept the evidence of the Tenant that the Landlord failed to perform a move in condition inspection report. The Landlord was relying on information he purportedly received from his caretaker, R. R. did not testify at the hearing, the Landlord could not recall his last name and that document was not before me.

*Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* provides the following additional guidance:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim

By failing to perform an incoming or outgoing condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*, the Landlord has extinguished their right to claim against the security deposit and the pet damage deposit *for damage to the rental unit*, pursuant to sections 24(2) and 36(5) of the *Act*.

A Landlord can only make a claim against a pet damage deposit for *damage*. As the Landlord had no right to claim against the pet damage deposit, the Landlord was required to return those funds to the Tenant at the conclusion of the tenancy pursuant to section 38(1)(c).

Additionally, the Landlord did not apply for dispute resolution until October 21, 2015. This was long past the 15 days required in section 38(1).

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$929.00**, comprised of double the pet damage deposit (\$100.00) and security deposit (\$364.50).

The Landlord sought monetary compensation for loss of rent for June 2015. I accept the Tenant's evidence, including the letter from the Landlord's former building manager, that she provided written notice to end her tenancy in accordance with the *Act*. Accordingly, I decline his request for unpaid rent for June 2015.

I will now address the Landlord's claim for compensation for damage to the rental unit.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

**Leaving the rental unit at the end of a tenancy**

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

I accept the Tenant's evidence that she informed the Landlord that the dishwasher required repairs. Appliances are the responsibility of Landlord's and I find the Landlord submitted insufficient evidence to support a finding that the Tenant damaged the dishwasher or that repairs were required due to her actions or neglect. Accordingly, I decline his request for compensation for repairs to the dishwasher.

The Landlord failed to submit any photos to substantiate his claim for damage to the rental unit or to support a finding that the rental unit was not cleaned as required by the *Act*. He also failed to submit a copy of the move out condition inspection report. Aside from the amount claimed for cleaning the oven/stove in the amount of \$50.00, the Tenant disputed the Landlord's claims. I find the Landlord has submitted insufficient evidence to support a finding that the rental unit required repairs and cleaning over and that the condition of the rental unit was over and above normal wear and tear. Accordingly, I grant him recovery of the **\$50.00** charge for cleaning the oven/stove only.

As the Tenant has been granted \$929.00 and the Landlord is entitled to \$50.00, those amounts are offset against one another such that the Tenant is entitled to a Monetary Order in the amount of **\$879.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The Tenant is entitled to return of double the deposits paid as the Landlord failed to file for Dispute Resolution within 15 days of receipt of her forwarding address in writing. The Landlord is entitled to recover the cost to clean the oven/stove. The amounts are

offset against one another such that the Tenant is entitled to a Monetary Order in the amount of **\$879.00**.

The Landlord, having been substantially unsuccessful is not entitled to recover his filing fee.

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: June 30, 2016

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Residential Tenancy Branch