



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR, MNSD, O

### Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$2372.51, and requesting recovery of the \$100.00 filing fee. The applicant is also requesting an order to retain the full security/pet deposit of \$1500.00 towards the claim.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

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

All parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

### Background and Evidence

Parties agree that this tenancy began on May 1, 2016 with a monthly rent of \$1500.00, due on the first of each month.

Parties also agree that the tenant paid a security/pet deposit of \$1500.00 at the beginning of the tenancy and the landlord is still holding that deposit.

Parties also agree that the tenant vacated the rental unit on August 31, 2016.

The parties also agree that no move-in inspection report was done at the beginning of the tenancy.

The tenant also stated that he does not dispute the landlord's \$356.15 claim for BC Hydro utility and \$566.76 superior propane utility.

The tenant also stated that he gave the landlord a forwarding address in writing, in person, on August 31, 2016, and the landlord did not dispute that claim.

The following portions of the claim are in dispute:

### Screen Repairs

The landlord testified that the tenant's pets damaged the screens in the rental unit and as a result they had to be repaired at a cost of \$176.10.

The tenant testified that the screens in the rental unit were damaged when he moved in and his pets caused no further damage to those screens.

### Carpet Repairs

The landlord testified that there was no damage to the carpets at the beginning of the tenancy, however at the end of the tenancy there were two holes in the carpets, one in the living room, and one in the bedroom, that she assumes were caused by the tenant's pets. She further states that the cost to repair the carpet was \$157.50.

The tenant testified that he is only aware of one hole in the carpet, and that's in the bedroom, and that hole was also there when he moved in. There was no other hole in the carpet and his pets caused no damage to any of the carpets in the rental unit.

#### Cleaning

The landlord testified that the tenant failed to clean the rental unit when he vacated, and left the rental unit very dirty, as can be seen in the photo evidence supplied, and as a result she had to have the rental unit cleaned at a cost of \$582.50 for cleaning, and \$50.30 for cleaning supplies.

The tenant testified that he maintain the rental unit in a reasonably clean condition throughout the tenancy, and at the end of the tenancy he got into a dispute with the landlord during which the police were called, and he has provided a copy of a statement from the police that shows that he was absolved from any responsibility for any further cleaning. The tenant therefore argues that he should not have to be paying anything further towards cleaning of this rental unit.

#### Dining Room Wall Damage

The landlord testified that the tenant had a large fish tank against the wall in the dining room and as a result moisture from the fish tank change the color of the paint on the wall and caused moisture damage. As a result of this damage she had to paint the wall herself at a cost of \$100.00.

The tenant testified that he did have a fish tank; however there was no damage to the dining room wall caused by the fish tank after he cleaned that wall when he vacated.

#### 80 Foot Water Hose

The landlord testified that the tenant was supplied with an 80 foot water hose at the beginning of the tenancy, and at the end of the tenancy that hose was missing. She further states that the replacement cost for the hose was \$89.60.

The tenant testified that the landlord never supplied him with a water hose, and the only hose he had was his own 50 foot black water hose, that he had repaired numerous times.

#### Two Silk Pillows and Pillow Cases

The landlord further testified that prior to this tenancy, the tenant rented another suite from her, and at that time she loaned him two pillows and pillow cases, and they were not returned, and the cost to replace those is \$313.60.

The tenant testified that the landlord never gave him any pillows, however she gave him some pillowcases in a previous tenancy, however that has nothing to do with this tenancy. He is however willing to return her pillowcases.

#### Analysis

The tenant stated that he does not dispute the claims for BC Hydro, and for Superior propane, and therefore I allow those portions of the claim.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case, in the absence of any move-in report, it is my finding that the landlord has not met the burden of proving the claims for damage to the screens, damage to the carpets, damage to the dining room wall, or the claim for a missing hose, as it is basically just the landlord's word against that of the tenants and the tenant denies causing any of this damage, and denies ever receiving a hose at the beginning of the tenancy.

I will however allow the landlords claim for cleaning and cleaning supplies because it's my finding that the landlord has shown that this rental unit was left in need of significant cleaning. The tenant claims that the evidence provided in the statement from the RCMP absolves him of any responsibility to clean, however it is my finding that, since a large portion of this document has been blacked out by the tenant, it is not clear whether or not any agreement was made by the landlord to absolve the tenant of any further cleaning.

I will not allow the landlords claim for missing pillows and pillowcases however as the claim for those missing items was not from this tenancy, but from a previous tenancy and therefore cannot be added to this claim.

Therefore the total amount of the claim that I have allowed is as follows:

Cleaning costs	\$562.50
Cleaning supplies	\$50.30
BC Hydro utility	\$356.15
Superior propane utility	\$566.76
Total	\$1535.71

Having allowed a significant portion of the landlord's claim I also allow the request for recovery of the \$100.00 filing fee.

With regards to the landlords request to retain the security deposit towards this claim, sections 23 & 24(2) of the Residential Tenancy Act states:

**23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

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

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

**24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished (my emphasis)** if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore since the landlord did not do a move-in inspection, the landlord did not have the right to claim against the security deposit for damages and the landlord was required to return the deposit within 15 days of receiving a forwarding address in writing.

Further section 38 of 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.

This tenancy ended on August 31, 2016 and the landlord had a forwarding address in writing by August 31, 2016 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished. The landlord has not returned the tenants security deposit and the landlords right to claim against the security deposit has been extinguished

Therefore, the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a combined security/pet deposit of \$1500.00, and therefore the landlord is required to pay \$3000.00 to the tenant.

### Conclusion

As stated above I have allowed \$1635.71 of the landlords claim, and therefore I have set off the \$1635.71 amount that I allowed, against the \$3000.00 that the landlord is required to pay to the tenant for return of double the security/pet deposit, and have issued an order for the landlord to pay \$1364.29 to the tenant.

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: February 07, 2017

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Residential Tenancy Branch