



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 AMOS REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on May 10, 2017 to keep the Tenant's security deposit and to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the nine minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that the Tenant was served with the Application and the Proceeding Package by registered mail on May 23, 2017 to the forwarding address the Tenant provided at the end of the tenancy. The Landlord submitted the Canada Post tracking number into oral evidence, which is detailed on the front page of this Decision, to verify this method of service. The Landlord explained that the documents had been returned back to him as unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on May 28, 2017 pursuant to the Act.

### Issue(s) to be Decided

- Is the Landlord entitled to damages to the rental unit?

- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the claim for damages to the rental unit?

### Background and Evidence

The Landlord testified that this tenancy started on January 30, 2017 for a fixed term which required the Tenant to vacate the rental unit on April 30, 2017.

A written tenancy agreement was completed which required the Tenant to pay rent in the amount of \$1,000.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00 at the start of the tenancy which the Landlord still retains in trust.

The Landlord completed a move-in Condition Inspection Report (the "CIR") with the Tenant on January 30, 2017. After the tenancy ended pursuant to the fixed term clause of the tenancy agreement, the parties completed a move-out CIR on April 30, 2017. The CIR was provided into evidence and details the Tenant's forwarding address which the Landlord received on that day.

The Landlord testified that the Tenant failed to clean the rental unit and also failed to clean and shampoo the carpets as required of them by clause 20 of the tenancy agreement. The Landlord explained that the Tenant was having delay issues in moving out of the rental unit.

The Landlord pointed me to the CIR and confirmed that the areas marked as "CLEAN" denote the areas that were not cleaned by the Tenant. The Landlord pointed me to the conclusion section of the CIR which shows damage as cleaning of the rental unit and carpet cleaning.

The Landlord provided invoice evidence of cleaning undertaken at the rental unit at a cost of \$300.00 and carpet cleaning at a cost of \$210.00, which the Landlord now seeks to recover from the Tenant.

### Analysis

I accept the Landlord's undisputed evidence that this tenancy ended in accordance with the fixed term clause of the tenancy agreement on April 30, 2017 pursuant to Section 44(1) (b) of the Act.

I also accept the Landlord's undisputed evidence that the Tenant served the Landlord with her forwarding address in writing on the move-out CIR undertaken on April 30, 2017. Therefore, I find the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit provided by Section 38(1) of the Act.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

Policy Guideline 1 to the Act details the responsibility of both a landlord and a tenant for residential premises. In relation to carpets, the guideline explains that generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Taking into consideration the undisputed evidence of the Landlord before me, and the lack of any preponderance of evidence from the Tenant or her appearance at this hearing, I find the Tenant failed to comply with Section 37(2) of the Act.

I accept the undisputed oral and CIR evidence of the Landlord showing the rental unit cleaning and carpet cleaning was not undertaken by the Tenant, likely because she was rushing to vacate the rental unit. I am satisfied by the invoice evidence claimed for the expenses incurred, and I find the Tenant is liable for the Landlord's cleaning costs totaling \$510.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$610.00.

As the Landlord already holds the Tenant's \$500.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

Accordingly, the Landlord is issued with a Monetary Order for the outstanding balance of \$110.00 (\$610.00 - \$500.00). This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of this order are attached to the Landlord's copy of this Decision. The Tenant should note that the Landlord is able to recover costs associated with the enforcement of this order.

### Conclusion

The Tenant has breached the Act by leaving the rental unit unclean. The Landlord may keep the Tenant's security deposit as remedy to this breach, and is issued with a Monetary Order for the outstanding balance of the damage and the filing fee in the amount of \$110.00.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 26, 2017

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Residential Tenancy Branch