



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDL-S, MNSD, FFT, FFL

### Introduction

This hearing was convened in response to cross applications.

On November 15, 2017 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, in November of 2017. The Tenant acknowledged receipt of these documents.

On November 20, 2017 the Tenant filed an Application for Dispute Resolution in which the Tenant applied the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, in November of 2017. The Agent for the Landlord acknowledged receipt of these documents.

On November 15, 2017 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, with the Application for Dispute Resolution. The Tenant stated that she did not receive any evidence from the Landlord.

The Agent for the Landlord requested an adjournment for the purposes of re-serving the Landlord's evidence to the Tenant. The parties were advised that I was inclined to grant

an adjournment as I had insufficient evidence to determine whether the Landlord's evidence had been served to the Tenant. The Tenant stated that she does not want an adjournment and that she is willing to allow me to consider the Landlord's evidence without having the opportunity to view it. The evidence was described to the Tenant, including a description of the photographs, and it was accepted as evidence for these proceedings.

On November 20, 2017 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in November of 2017. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 28, 2017 and May 31, 2018 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord, as it is simply duplicates of evidence previously submitted to the Residential Tenancy Branch.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?  
Should the security deposit be retained by the Landlord or returned to the Tenant?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on April 01, 2015;
- the tenancy ended on October 31, 2017;
- the Tenant provided the Landlord with a forwarding address on October 31, 2017, in writing;
- the Tenant paid a security deposit of \$800.00;
- a condition inspection report was completed at the beginning of the tenancy; and
- a condition inspection report was completed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$200.00, for cleaning the rental unit. The Landlord submitted photographs, which the Agent for the Landlord stated were taken at the end of the tenancy, which the Landlord contends show the unit required cleaning.

The Tenant submitted a copy of the condition inspection report that was completed at the end of the tenancy, which the Tenant signed to indicate the report fairly represented the condition of the rental unit. The report indicates show the rental unit required some cleaning.

The Tenant stated that she did not leave the rental unit in pristinely clean condition because she did not receive the unit in pristinely clean condition at the start of the tenancy. The Tenant submitted photographs that she contends depict the condition of the rental unit at the start of the tenancy. The Agent for the Landlord agrees that the photographs accurately reflect the condition of the rental unit at the start of the tenancy.

The Agent for the Landlord stated that the Landlord paid to have the rental unit cleaned on April 06, 2015, which included cleaning the fridge which the Tenant had advised had a foul odour. The Tenant stated that on April 06, 2015 the Landlord paid to have the fridge cleaned, but no other areas of the rental unit were cleaned by the Landlord's cleaner.

At the hearing the Agent for the Landlord withdrew the claim for a late fee.

The Landlord is seeking compensation, in the amount of \$29.50, for a fire re-inspection fee.

The Agent for the Landlord stated that on February 16, 2017 a notice was posted on the Tenant's door which informed the Tenant that the rental unit would be inspected by a fire inspector on March 15, 2017. She stated that the notice directed the Tenant to leave her keys with the building concierge if she was not going to be home at the time of the inspection.

The Agent for the Landlord stated that the Tenant did not provide the fire inspector with access to the rental unit on the date of the inspection and she did not leave a key with the concierge for that purpose. She stated that the Landlord was not charged for the scheduled inspection but was charged \$68.25 to have the unit inspected at a later date. She stated that a credit on the Tenant's account, in the amount of \$38.75, was applied towards this cost and that the Tenant still owes \$29.50 for the re-inspection.

The Tenant stated that she does not specifically recall receiving the notice of this inspection, although she thinks she received it. She stated that she typically accommodates all requests from the Landlord, although she does not specifically recall if she was home at the time of the inspection on March 15, 2017 or if she left her keys with the concierge on that date.

### Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of each tenancy.

On the basis of the photographs submitted in evidence by the Landlord I find that the rental unit was left in reasonably clean condition at the end of the tenancy. I find that the majority of the photographs submitted by the Landlord show that very minor cleaning was required and I therefore conclude that most areas were left reasonably clean. I find that the photographs show that the oven required cleaning, although not an extensive amount of cleaning.

On the basis of the photographs submitted in evidence by both parties and the undisputed testimony of the Tenant, I find that the cleanliness of the rental unit at the end of the tenancy was consistent with the cleanliness of the unit at the start of the tenancy. Although the oven required cleaning at the end of the tenancy I find the fridge required a similar amount of cleaning at the start of the tenancy.

Considering the condition of the rental unit at the start of the tenancy, I find that the rental unit was left in reasonably clean condition at the end of the tenancy. As the rental unit was left in reasonably clean condition at the end of the tenancy, I dismiss the Landlord's claim for cleaning.

Although I accept that the Landlord paid for some cleaning at the rental unit on April 06, 2015, the fact remains that the Tenant had to live with a foul smelling fridge for six days.

I find that the need to clean the stove at the end of the tenancy is fair compensation for proving the Tenant with a foul smelling fridge at the start of the tenancy.

Section 32(1) of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I therefore find that the Landlord had a right to maintain its property by having the rental unit inspected by a fire inspector.

There is nothing in the *Act* that requires a tenant to assist a landlord that is exercising its right to maintain a rental property. I cannot, therefore, conclude that the Tenant breached the *Act* when she did not provide the fire inspector with access to the rental unit on March 15, 2017.

In the event a tenant is not home when a landlord wants to enter the rental unit for the purposes of maintaining the property and the landlord has provided proper notice of entry, the landlord has the right to enter the rental unit even if the tenant is not home. In these circumstances I find that it would have been reasonable for the Landlord to contact the Tenant a few days prior to March 15, 2017 to ascertain whether she was going to be home or was willing to leave a key with the concierge. In the event the Tenant did not indicate a willingness to assist the Landlord in this regard, the Landlord retained the right to attend the rental unit and provide access to the fire inspector.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord suffers a loss as a result of the tenant breaching the *Act*. As the cost of having the rental unit re-inspected by a fire inspector was not the result of the Tenant breaching the *Act*, I dismiss the Landlord's claim for a re-inspection fee.

I find that the Landlord has failed to establish that it is entitled to retain any portion of the Tenant's security deposit. I therefore find that the entire deposit of \$800.00 must be returned to the Tenant.

As the tenancy ended on October 31, 2017, the Tenant provided her forwarding address to the Landlord on October 131, 2017, and the Landlord filed the Application for Dispute Resolution on November 15, 2017, I find that the Landlord filed this Application within the timelines established by section 38(1) of the *Act*. I therefore find that the Tenant is not entitled to recover double the security deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Landlord has failed to establish the merit of its Application for Dispute Resolution and I therefore dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

### Conclusion

The Tenant has established a monetary claim, in the amount of \$900.00, which includes \$800.00 for the security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the \$900.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 26, 2018

---

Residential Tenancy Branch