



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on March 6, 2018 wherein the Landlord requested monetary compensation for unpaid rent, cleaning of the rental unit and recovery of the filing fee.

The hearing was conducted by teleconference on May 17, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

### Preliminary Matter

At the outset of the hearing the Tenant's mother advised that they had not filed any evidence in response to the Landlord's claims. She stated that she filed evidence in the Tenant's Application, which was to set to be heard in November 2018 (the file number of that application is noted on the unpublished cover page of this my Decision).

The parties were informed of the date and time of the hearing by way of a Notice of Dispute Resolution Hearing sent by the Residential Tenancy Branch. That document includes the following information regarding the importance of filing evidence:

### **General Information**

- It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).

The [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit) link provides the parties with further information about uploading evidence as follows:

### Uploading My Evidence

The best way to submit evidence is online.

Upload evidence through the Dispute Access Site any time before the dispute is resolved—but make sure you meet your [evidence deadlines](#).

Go to the [Dispute Access Site](#), enter your unique Dispute Access Code and begin uploading your evidence.

- In the upload window, select files from a location on your computer, tablet or smart phone.
- It is a good idea to give files a logical file name
  - For example, carpet\_stain\_2017630.jpg
- You must describe the file in the field provided
  - For example, "stain on living room carpet taken during condition inspection on June 30, 2017"
- If you are uploading an audio or video file, provide a time code for the key point in the file in the description field
  - For example, "Video at time code 2:02 of using the kitchen faucet to turn on hot water, recorded on March 17, 2017"

Once you complete the upload, the Dispute Access Site will get a receipt showing what you uploaded—remember to keep that for future reference. You can either print a copy or email it to yourself.

The Landlord filed her Application on March 6, 2018, more than two months prior to the hearing date. The Tenant did not file their application until May 4, 2018, less than two weeks prior to the Landlord's hearing.

As the Tenant failed to file any evidence in response to the Landlord's claim, the only evidence properly before me was the Landlord's.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified as follows. The rental unit is a basement suite in a home which was rented by the Landlord. Monthly rent was payable in the amount of \$900.00. The tenancy began March 1, 2017 on a month to month basis. The Tenant paid a security deposit in the amount of \$450.00, which the Landlord continues to hold.

The Landlord stated that the parties signed a mutual agreement to end tenancy in December of 2017 such that the Tenant agreed to move out on February 28, 2017. A copy of the mutual agreement was provided in evidence.

Despite the agreement, the Tenant moved out of the rental unit on February 11, 2017. In the hearing before me the Landlord requested monetary compensation in the amount of \$900.00 for unpaid rent for the month of February 2017.

The Landlord also sought cleaning costs in the amount of \$100.00. Introduced in evidence was a copy of an invoice for cleaning dated on March 6, 2018 as well as photos of the rental unit taken by the Landlord at the end of the tenancy.

The Landlord also sought to retain the Tenant's security deposit as well as recovery of the \$100.00 filing fee.

In response to the Landlord's claim the Tenant's mother stated that the Landlord's photos were fraudulent and that the cleaner was not in fact a cleaner.

The Tenant's mother further stated that she moved her son out of the rental unit on February 11, 2018. She claimed that when she got to the rental unit the back door was open and they had to file a police report.

The Tenant's mother further stated that they cleaned the rental unit "to the best of their ability", without light, heat or power, as the Landlord had already shut off the power before the end of the tenancy. She stated that they cleaned under the stove and stated that she took a video of her husband cleaning the rental unit. As noted, the Tenant failed to file any evidence in response to the Landlord's claim such that the video was not before me.

The Tenant's mother also stated that she believed that the Landlord turned off the power on approximately February 3, 2018 because her son's food was all spoiled as of that date.

The Tenant also testified. He stated that he left the rental unit "two days after he received the notice to end tenancy and flew to South America". He confirmed that he flew out on February 8, 2018, did not return to the rental unit and that his family cleaned the unit and moved all of his things to storage.

Introduced in evidence was a copy of the 10 Day Notice to End Tenancy (issued on February 3, 2018) upon which the Landlord wrote that it was served on the Tenant February 3, 2018 by posting to the rental unit door.

In response to the Tenant's submissions and the allegation that the Landlord submitted fraudulent photos and a fraudulent receipt for cleaning, the Landlord said it was "pretty far-fetched". At this time the Tenant began laughing and was cautioned.

The Landlord stated that the photos show the condition of the rental unit on February 11, 2018 after the Tenant's parents dropped the key in the mailbox and they were gone.

The Landlord also stated that he had no idea why the back door was open as claimed by the Tenant's mother.

### Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

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.

I find that the Tenant vacated the rental unit on February 11, 2018. Pursuant to the residential tenancy agreement filed in evidence rent was payable on the first of the month; as such the Landlord is entitled to unpaid rent for the month of February.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlord's testimony that the rental unit required cleaning at the end of the tenancy. I am persuaded by the photos he submitted in evidence which clearly show that the rental unit was not reasonably cleaned as required by the *Act*. Although the Tenant's mother testified that the photos were fraudulent, she failed to provide any evidence to support this bold allegation. Further, as the Tenant left the rental unit to go traveling, he was not able to testify as to the condition of the rental unit at the end of the tenancy. While it is always difficult to reconcile conflicting testimony, I find that the photos of the rental unit, and the invoice for the cleaning provided by the Landlord, support the Landlord's testimony as to the condition of the rental unit at the end of the tenancy. I therefore award him the \$100.00 amount claimed for cleaning.

The Landlord has been substantially successful in his application and I therefore also award him recovery of the filing fee pursuant to section 72 of the *Residential Tenancy Act*.

### Conclusion

The Landlord is awarded the sum of **\$1,100.00** including \$900.00 in unpaid rent for February 2018, \$100.00 for cleaning of the rental unit and recovery of the \$100.00 filing fee.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, the Landlord is authorized to retain the Tenant's \$450.00 security deposit towards the amounts claimed and is granted a Monetary Order pursuant to section 67 for the balance due of **\$650.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court 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 *Residential Tenancy Act*.

Dated: June 15, 2018

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Residential Tenancy Branch