



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for damages for cleaning and repairs and for an order to retain the security deposit. The Landlord also requests an order for payment of the filing fee.

The Landlord and her spouse, CJ appeared for the scheduled hearing, along with the Tenant, HV. I find that the notice of hearing was properly served and that evidence was submitted by all parties. The Landlord raised a concern that the Tenants’ documents were filed 11 days prior to the hearing, however, I find that this meets the requirement of a respondent to file at least 7 days prior to the hearing as required under the RTB Rules of Procedure, Rule 3.15. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issues to be Decided

Is the Landlord entitled to a monetary order for damages, pursuant to section 67 of the *Residential Tenancy Act* (“Act”)?

Is the Landlord entitled to retain the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to reimbursement of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The tenancy began November 1, 2014 for a fixed term which reverted to a month-to-month lease that ultimately ended on November 30, 2017. The rent was \$1,700.00 and a copy of the tenancy agreement was submitted into evidence. The security deposit was \$850.00 and the pet deposit was \$425.00; the pet deposit was returned to the Tenants; an offer was made to return a portion of the \$850.00 to cover a claim for damages, but the Tenants declined.

The tenancy ended when the Tenants were served with a Two Month Notice to End Tenancy for the Landlord's Use of Property. The Landlord states that she planned to move into the property and that the remaining tenants on the property have also moved out. She has been unable to move in due to delays from a flooding that occurred from a sprinkler line and a Stop Work Order that was issued requiring permits to complete a bathroom following water damage. She is uncertain as to when the work will be completed to a stage where she can move in.

A Condition Inspection Report dated December 2, 2017 was submitted into evidence and was signed by both parties at move-in and move-out. Both parties agree that the upstairs suite was not clean when the Tenant took possession one day early and that she agreed to clean it herself; she claims that it was filthy and that there were broken tiles in one of the bathrooms. She states the entire inspection was over in 15 minutes, as compared to the move-out inspection which took about 90 minutes.

The Tenant appears to have agreed with the contents of that report, but disputes the amount of the claim being made by the Landlord. In particular, the Tenant provided a written statement which says that the Landlord is undergoing substantial renovations and all tenants have vacated the premises, the city of Vancouver having issued a Stop Work Order which was posted on the front door. She claims pictures of garbage in the yard belong to the Landlord, who uses the yard for storage. She denies being liable for landscaping, as she was only required to general maintenance of the yard.

The Landlord's spouse, CJ, provided approximately 50 photographs to document the condition of the premises, taken immediately after the walk-through inspection. He went through the photographs and described in detail the condition of each room. For the most part, the issues seem to have been surface dirt, dust and cobwebs, as well as

missing lightbulbs. The final clean up was done by the Landlord herself, although she did obtain two quotes from professional cleanings which averaged \$250.00. More “heavy duty” cleaning, window cleaning and carpet cleaning is claimed for a further \$370.00. Total cleaning costs claimed are **\$620.00**.

In addition to the claim for cleaning, the Landlord claimed **\$50.00** to replace bulbs. The Tenant left behind bulbs, but some were not the proper kind; further the Landlord states she had to hire someone to climb a ladder to replace lights in the ceiling.

The Landlord’s spreadsheet of damages includes the following **\$600.00** in repairs:

\$150.00 for tiles broken on right side of sink and in front of sink;  
\$200.00 for broken shower ledge and side tiles; the Tenant states the tiles were already missing when she moved in;  
\$200.00 for main bathroom tub tile that had fallen off, which the Tenant states happened the week before she vacated;  
\$50.00 for drilling through a window jamb without permission, a corroding battery causing damage to the sill;

An additional **\$245.00** was claimed for yard work, including raking leaves and debris as well as replacing a wheelbarrow the Landlord claims was removed from storage and left outside to rust. The Tenant states that they always did general maintenance on the yard but that they moved out in the winter season and left it in proper condition for the season. She stated that the wheelbarrow was left by the Landlord under some stairs, which is where she also stored it during the tenancy.

The Landlord claims the total amount of \$1,515.00 against the Tenants and asks to retain the \$850.00 security deposit in partial satisfaction of this award.

### Analysis

Under section 67, either party has a right to bring a claim for damages:

*67. Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord claims that the Tenants failed to meet their obligations under the Act to repair and maintain the property. Section 37 of the Act states, in part:

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

**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. [bolding added]***

I have considered the verbal testimony of the parties as well as the documents and over 300 photographs uploaded into evidence and I am satisfied that the Landlord has proven the following damages on a balance of probabilities:

- The house required some additional cleaning, but at the witness's own admission, much of the surface dirt and grime that remained was very easy to remove. The Landlord mitigated her losses by doing the work herself. I am prepared to award her six hours of labour at \$25.00 an hour, for a total award of **\$150.00**, which is reasonable given the evidence submitted and the items documented by both parties in the move-out report.
- I am not prepared to award the \$100.00 for window cleaning as the Tenant states that the Landlord has replaced all the windows and this was not disputed;

- I award a further **\$50.00** for carpet cleaning as the Tenant agreed to professionally clean the carpets under the addendum to the tenancy agreement, due to the presence of her pet;
- I award **\$30.00** for the six missing light bulbs noted in the move-out report; the additional four indicate that the Tenant supplied replacements;
- The move-in report indicates broken tiles in the kitchen near the sink were pre-existing and therefore I am not allowing the \$150.00 claim for this repair upon move-out.
- The missing tiles in the bathrooms have not been directly linked either to these Tenants nor to the water damage; the Tenant pointed out that there was leaking down the wall from a previous tenant and also while they resided there and the eavestrough overflowed, which the Landlord admits happens “all the time”. There is no indication in the move-out inspection report about tile or water damage; in any event, the Tenant admits that broken tiles were pre-existing in one bathroom and that one tile had broken in the other bathroom the week prior to her move-out date. I find that the Landlord has not proven that these Tenants are liable for this damage, or for any water damage found in the walls of those rooms, on a balance of probabilities.
- With respect to the claim for the yard clean-up, I find that the Tenant’s evidence that she did the maintenance in the yard to be credible. The move-out inspection was early December after a month of heavy rains and this would make it difficult to present a neatly-groomed yard; furthermore, there is no evidence in the move-in or move-out inspection report about a wheelbarrow nor its condition. Accordingly, I do not hold the Tenant liable for the normal clean up in the yard that would be expected after the winter season, nor for the replacement of the wheelbarrow.

I further took into consideration the fact that these photographs show that the home is relatively old and that it is apparent that there has been considerable wear and tear throughout the premises over many years of occupancy. The Landlord cannot expect the Tenants to leave a home of this age and condition in a pristine state - after having been handed it in an unclean condition, with considerable wear and tear and no obvious replacement of flooring or fixtures where they appear to be past their useful life expectancy. The final award is calculated at \$230.00.

With respect to the security deposit, section 38 of the *Act* requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a

monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The Landlord testified that she continues to hold the Tenants' security deposit of \$850.00. She filed a dispute application within 15 days as required under the Act. I allow the Landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary award of **\$230.00**. Over that period, no interest is payable on the Landlord's retention of the security deposit. The balance of **\$620.00** shall be paid to the Tenants and an Order will be issued in respect of this.

This Order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenants' copy of this Decision. There will be no order for payment of the filing fee, given the mixed outcome of this dispute.

### Conclusion

The Landlord is entitled to retain the sum of \$230.00 from the Tenants' security deposit in satisfaction of a monetary award in that amount.

The Landlord shall pay the balance of \$620.00 forthwith to the Tenants.

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 12, 2018

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Residential Tenancy Branch