



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 5, 2018, wherein the Landlord requested monetary compensation from the Tenant, authority to retain his security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 18, 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

This tenancy began as a one year fixed term tenancy on September 1, 2015 ending on August 31, 2016. Monthly rent was paid in the amount of \$2,500.00 per month. The parties agreed that the Landlord holds the sum of \$312.50 representing the Tenant's share of the security deposit.

The Tenant made a previous application for return of his security deposit; he was successful in that application and received a Monetary Order for return of double the deposit paid. The Landlord applied for and was granted a review hearing of that Decision. The Review Hearing Decision set aside the original Decision granting the Tenant return of double his deposit. The file number for that Decision is recorded on the unpublished cover page of this my Decision.

The Landlord filed a Monetary Orders worksheet confirming she is seeking the following compensation:

Tenant's share of carpet cleaning	\$98.45
Tenant's share of general cleaning	\$35.00
charge for an additional occupant (Tenant's girlfriend from June to August 2018)	\$1,000.00
charge for the Tenant as an "additional occupant" in August 2017	\$500.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$1,733.45</b>

The Tenant confirmed he was agreeable to paying the cost of the carpet cleaning and general cleaning as he understood those amounts would be taken from his security deposit of \$312.50. The Tenant also confirmed that in the original hearing he erroneously noted his security deposit as \$337.50 when the amount paid was actually \$312.50.

The Tenant opposed the Landlord's claim for compensation for time he and his girlfriend visited the rental unit after his tenancy ended and the Landlord entered into a new tenancy.

### Analysis

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.

Section 63 of the *Act* and *Rule 8.4* of the *Residential Tenancy Branch Rules of Procedure* allow me to record the parties' agreement in my Decision and resulting Order. The Tenant confirmed that he was agreeable to compensating the Landlord for his share of the cost of carpet cleaning and general cleaning. I therefore award the Landlord the **\$133.45** claimed.

The Landlord sought compensation for "additional occupants" for a period of time following the end of the tenancy and after which she entered into a new tenancy agreement with four other renters (a copy of that tenancy agreement was provided in evidence). As the subject tenancy between the Tenant, K.M., and the Landlord ended on August 31, 2016, any monetary claim the Landlord may have for additional occupants (should such amounts be specifically provided for in the subject tenancy agreement as required by section 13(2)(f)(iv) of the *Act*) would be against the new tenants. I therefore dismiss that portion of her claim.

Section 38 of the *Act* provides that a Landlord must make an application for dispute resolution if a Landlord wishes to retain any portion of the Tenant's security deposit. While the Tenant agreed the Landlord could retain a portion towards the cleaning costs, it does not appear he did so prior to the hearing; nor did he confirm this agreement in writing as required by section 38(4)(a) of the *Act*. Accordingly, I award the Landlord recover of the filing fee in the amount of \$100.00.

Conclusion

The Landlord is entitled to the sum of \$233.45 calculated as follows:

the Tenant's share of carpet cleaning	\$98.45
the Tenant's share of general cleaning	\$35.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$233.45</b>

The Landlord is entitled to retain the sum of \$233.45 from the Tenant's \$312.50 security deposit and must return the balance of **\$79.05** to the Tenant.

The Tenant is granted a Monetary Order in the amount of \$79.05. Should the Landlord not pay as required the Tenant must serve the Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: October 18, 2018

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Residential Tenancy Branch