



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REGIUS INVESTMENT CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 03, 2019 (the “Application”). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Agents for the Landlord appeared at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed she received the hearing package and Landlord’s evidence. R.B. said he received the Tenant’s evidence but not until April 15, 2019. R.B. confirmed he had time to review the evidence. I also noted that the evidence was served in time as it was received more than seven days before the hearing and seven days is the deadline pursuant to rule 3.15 of the Rules of Procedure.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$1,000.00 for damage caused to the deck of the rental unit.

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy started September 01, 2016. The Tenants had paid a \$997.50 security deposit.

The parties agreed the tenancy ended November 30, 2018.

R.B. testified that the Landlord never received a forwarding address from the Tenants but knew the Tenants had moved to their current address. The Tenant testified that the Tenants live in a different building owned by the same Landlord. The Tenant pointed to an email submitted which shows the Tenants' current address in the subject line of the email.

Both parties agreed on the following. A move-in inspection was done September 29, 2016. A Condition Inspection Report was completed and signed by both parties.

The Tenant testified that she was not given a copy of the Condition Inspection Report on move-in. R.B. testified that the Landlord gives all their tenants copies but could not point to any evidence that this was done in this matter.

Both parties agreed on the following. A move-out inspection was done. A Condition Inspection Report was completed and signed by both parties.

The Tenant testified that she received the move-out Condition Inspection Report as evidence for this hearing. She did not know when she received it. M.W. testified that the Landlord always makes copies and delivers it to tenants but could not point to any evidence that this was done in this matter.

R.B. testified as follows in relation to the deck. The deck was fine on move-in. At the end of the tenancy, there was spray paint on the deck. The Tenants were given an opportunity to clean the deck. An agent for the Landlord told the Tenants they could use warm soapy water with a bit of bleach to clean the deck.

R.B. testified that the Tenant used steel wool to clean the deck and relied on a photo submitted which shows the deck, a bucket, a green scrubber, a grey brush, a towel, a brush with a handle and steel wool. R.B. submitted that it was the steel wool that ruined the deck. He testified that the texture of the deck was removed and relied on a photo in this regard. R.B. testified that it is obvious something severe was used and this was not in accordance with the instructions of the Landlord.

R.B. testified that the Landlord had to replace the vinyl on the deck because of the damage.

The Tenant testified as follows. The agent for the Landlord who allowed the Tenants to clean the deck supervised the cleaning. The Tenant brought her own cleaning materials. The Landlord provided a brush to use. She used the brush provided by the Landlord to clean the deck and only used what the Landlord told her to use.

The Tenant denied that the original stain was spray paint and denied that the Tenants caused the stain. The Tenant said the stain was on the balcony at the start of the tenancy and got worse over time.

The Tenant testified that the deck company's website says to use soap or laundry detergent to clean the decks and not to use bleach.

The Tenant took the position that the vinyl had a useful life of 15 to 20 years.

In reply, R.B. testified that the Landlord's agent was not present during the cleaning. He said she let the Tenant into the suite and then left because she was sick. He said it is not the agent's feet in the photo. R.B. testified that he does not believe the Landlord provided anything to the Tenant to use to clean the deck.

R.B. testified that the deck vinyl was 25 years old. R.B. testified that he built the building and good quality materials were used. He said the useful life of the vinyl was 50 to 75 years.

In the emails submitted by the Landlord there is an email from the agent of the Landlord who allowed the Tenants to clean the deck. The agent has made comments in red in the Tenant's email below and the following comment is made by the agent at page two:

From Tenant: I cleaned the subject dirt stains using warm water and a bit of bleach...[the agent] was present to see that the subject dirt stains had been removed and there were no comments about the finish being scrubbed off.

In red from the agent: I did comment on the stains that after cleaning you could see the outlines but that I would not give you a decision on the spot as you were wanting as it was dark and I was not the one making the decision...

The Landlord also submitted an email dated December 19, 2018 to the Tenant from the agent who allowed the Tenants to clean which states:

Can we plan for this Thursday? I will make a point to let you in and stay there.

### Analysis

Section 7 of the *Residential Tenancy Act* (the "Act") states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states:

(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...

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

There is no issue that the Tenants participated in the move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* given my decision below in relation to section 38(1) of the *Act*.

There is no issue that the tenancy ended November 30, 2018.

R.B. took the position that the Landlord never received the Tenants’ forwarding address. There is no issue that the Tenants now live in a different building owned by the Landlord. R.B. acknowledged that the Landlord knew where the Tenants lived. However, I do not find this sufficient. If the Tenants wanted their security deposit returned, they were required to provide the Landlord with their forwarding address in

writing. This applies whether or not the Landlord otherwise knew where the Tenants lived.

I am not satisfied the Tenants did provide the Landlord with their forwarding address in writing. The Tenant pointed to an email with the new address in the subject line. This is not sufficient as neither the email nor the subject line refers to the address as a forwarding address.

I do not accept that the Tenants provided their forwarding address in writing to the Landlord. Therefore, the obligations of the Landlord under section 38 of the *Act* were not triggered. I find the Landlord has complied with section 38(1) of the *Act* by filing the Application prior to receiving the Tenants' forwarding address in writing.

I am not satisfied the Landlord has proven that they are entitled to compensation for replacement of the deck vinyl.

In my view, the issue is the cleaning of the deck. The email correspondence submitted shows that the Tenant tried to obtain information from the deck company about how to clean the deck. The email correspondence shows that how to clean the deck and what to use on the deck was at the forefront of the discussions between the Tenant and agent for the Landlord.

The email correspondence shows the agent for the Landlord told the Tenant to use warm water and bleach. There is no evidence that the Landlord told the Tenant what scrubbing tools could or could not be used. If the Tenant was not supposed to use a particular scrubbing tool, the Landlord should have told the Tenant this as it is clear the Tenant was diligent in trying to obtain direction on how to clean the deck.

R.B. submits that the Tenant used steel wool to clean the deck and that this is what caused the damage. The only evidence the Landlord provided in support of this is a photo showing steel wool beside a bucket on the deck. There are also towels, a green scrubber, a small brush and a larger handled brush in the photo. The Tenant denies that she used steel wool. This is the Landlord's application and therefore the Landlord has the onus to prove the claim.

I am not satisfied based on the photo that the Tenant used steel wool. The photo simply shows what items were sitting on the deck when the photo was taken. It does not show that the Tenant used the steel wool. I cannot find that the Tenant used all the

items shown in the photo simply because they were present in the absence of further evidence to support this. I am not satisfied the Tenant used steel wool.

Further, the Tenant testified that the Landlord's agent was present for the cleaning and supervised the cleaning. R.B. denied this. The only evidence R.B. pointed to in support of his position was that it is not the agent's boots in the photos of the deck.

Whether it is the agent's boots or not says nothing about whether the agent was present. I do not find R.B.'s submissions on this point compelling. The email correspondence from the Landlord's agent seems to indicate that she was present as she acknowledged commenting on the stains after the cleaning was finished. Given the lack of evidence to support R.B.'s position, and the evidence that seems to support the Tenant's position, I do not accept that the Landlord's agent left before the cleaning was finished.

The Tenant testified that she used a brush provided by the Landlord. R.B. said he did not believe the Landlord provided the Tenant a brush. R.B. did not point to any evidence in support of this, other than to state that there is no mention of this in the emails. I do not find R.B.'s testimony about what occurred when the Tenant cleaned the deck particularly reliable given his testimony about the Landlord's agent leaving which seems to be contradicted by the Landlord's own evidence. Further, R.B. was not present and therefore I place very little weight on his testimony about whether the Landlord provided the Tenant with the brush used.

The Tenant testified that she used a brush provided by the Landlord as well as water and bleach as instructed by the Landlord. The Landlord has not shown that the Tenant did anything other than use a brush provided by the Landlord as well as water and bleach as instructed. I am not satisfied the Tenant did anything other than what the Landlord instructed her to do to clean the deck. I am not satisfied the Tenant damaged the deck beyond reasonable wear and tear given I am not satisfied she did anything other than follow the Landlord's direction on how to clean the deck.

Given the above, I am not satisfied the Tenant breached the *Act* and am not satisfied the Landlord is entitled to compensation for the deck.

Given the Landlord was not successful in this application, I decline to award the Landlord reimbursement for the filing fee.

The Application is dismissed without leave to re-apply. Given this, the Landlord must return the security deposit to the Tenants. The Tenants are issued a Monetary Order for \$997.50 which is enforceable if the Landlord does not return the security deposit.

### Conclusion

The Landlord has failed to prove the claim. I decline to award the Landlord the compensation sought and decline to award reimbursement for the filing fee. The Application is dismissed without leave to re-apply.

The Landlord must return the security deposit to the Tenants. The Tenants are issued a Monetary Order for \$997.50 which is enforceable if the Landlord does not return the security deposit. If the Landlord does not return \$997.50 to the Tenants, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: May 15, 2019

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Residential Tenancy Branch