



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for money owed or compensation for alleged damage to the rental unit and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

### Preliminary and Procedural Matters

The evidence was discussed and the landlord was informed that I had not received any documentary evidence from her. The landlord submitted that her husband had made the application on-line and appears he did not use the "save" options.

In addition, I had not received any documentary evidence from the tenant; however, the tenant submitted that she had not received the landlord's application or any evidence. In explanation, the tenant submitted that she only learned of the hearing after calling the Residential Tenancy Branch ("RTB") when the landlord sent a text message that she was filing an application.

I allowed the hearing to continue, with the understanding that I had no documentary evidence from the landlord before me in support of her application.

I have reviewed all oral evidence; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and pet damage deposit in satisfaction of their monetary claim?

Is the landlord entitled to recovery of the filing fee paid for this application?

Background and Evidence

The oral evidence was that this tenancy began on September 15, 2017, ended on April 15, 2019, when the tenant vacated the rental unit, monthly rent was \$1,200.00, and that the tenant paid a security deposit and pet damage deposit of \$600.00 each.

The landlord has retained the security deposit and pet damage deposit, having made this application claiming against the two deposits.

The landlord's monetary claim was \$600.00 for 14 hours in cleaning the rental unit after the tenancy ended and \$600.00 for a loss of rent revenue for April 15-30, 2019.

In support of her application for cleaning, the landlord submitted that the tenant did not clean the rental unit prior to leaving. The landlord submitted that she had begun to clean the rental unit herself, but allowed the tenant back in to clean after she moved out; however, the rental unit was still not adequately cleaned.

The landlord submitted there was cat hair all over the rental unit, every "nook and cranny", including the vents and appliances, and under the stove and refrigerator.

The landlord submitted that was a coffee stain which could not be removed, there were chips on the moulding, and the blinds were not cleaned. In addition, the landlord submitted that the written tenancy agreement required the tenant to have the carpet professionally cleaned.

The landlord submitted that the cleaning required 14 hours.

As to the landlord's claim for unpaid rent for April 2019, she stated that she received notice on March 14, 2019, that the tenant was vacating the rental unit on April 15, 2019, having received only half a month's rent for April. The landlord submitted that this was not adequate notice per the Act in ending a tenancy.

In response to my inquiry, the landlord submitted that she did not immediately attempt to re-rent the rental unit when she received notice from the tenant, as she lived out of town and would not be able to attend showings. The landlord confirmed that she came into town on April 23, 2019, to deal with the cleaning and re-renting.

In response to my inquiry, the landlord submitted that she had a move-in and move-out condition inspection report ("CIR") and that the tenant did sign the report, disagreeing with the condition.

#### *Tenant's response-*

The tenant submitted that she had photographs of the rental unit, which would show that she cleaned the rental unit; however, she did not submit them as she had not received any evidence from the landlord. The tenant disputed that the chips were damage to the rental unit, but was due to reasonable wear and tear. The tenant said she disagreed with the CIR that the landlord prepared.

As to the landlord's claim for unpaid rent for April 15-30, 2019, the tenant submitted that the landlord did not immediately advertise the rental unit, although she asked for permission to place ads for the rental unit so that another tenant could move in on April 15, 2019. The tenant submitted that she offered to show the rental unit, but was not granted permission. The tenant submitted that there were no ads placed by the landlord until the 2<sup>nd</sup> week in April 2019.

In response to my inquiry, the tenant submitted that she provided the landlord her forwarding address at the move-out inspection.

#### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting

from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate her claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As to the landlord's claims against the tenant for cleaning and damage to the rental unit, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. In the circumstances before me, although I accept the landlord's submission that there was a move-in and move-out CIR, that report was not before me. Additionally there were no photographs of the rental unit either from the start or end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant.

Additionally, the tenant disputed that she failed to leave the rental unit reasonably clean and undamaged. I find that disputed oral evidence, without more proof, does not meet the burden of proof on the required balance of probabilities.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenant for damage to the rental unit or for cleaning. Additionally even without the CIR, the landlord failed to submit proof that she sustained a loss for cleaning or repairs to the rental unit through receipts or time records, another key component in the landlord's burden of proof.

As to the landlord's claim for loss of a half month's rent, the landlord was required under the Act to take measures to minimize her loss. I find a reasonable way for a landlord to minimize a loss for unpaid rent is to immediately advertise the rental unit.

In this case, the landlord confirmed that she did not immediately advertise the rental unit when she received the tenant's notice on March 14, 2019, as she lived out of town. I find nothing to dispute the tenant's testimony that it was the second week in April 2019 before any advertisements were made by the landlord.

If the landlord is unable to attend to the matters relating to their rental unit due to living out of town, I find it is upon the landlord to appoint an agent to run their business in their absence.

In this case, I find the evidence shows that that the landlord failed to start advertising the rental unit immediately and instead, waited for 3-4 weeks until she returned to town. I therefore find the landlord failed to take reasonable steps to minimize her loss and as such, has not met her burden of proof as outlined above.

Due to the above findings, I find the landlord submitted insufficient evidence to support her monetary claim against the tenant and therefore dismiss her application, without leave to reapply, including her request to recover the filing fee.

As I have dismissed the landlord's monetary claim against the tenant, I order the landlord to return the tenant's security deposit of \$600.00 and her pet damage deposit of \$600.00, or \$1,200.00 in total, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$1,200.00, comprised of her security deposit of \$600.00 and pet damage deposit of \$600.00.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement purposes, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit and pet damage deposit, immediately, and the tenant is granted a monetary order in the amount of those deposits in the amount of \$1,200.00 in the event the landlord does not comply with this order.

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 26, 2019

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Residential Tenancy Branch