



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in March of 2019 the Dispute Resolution Package and evidence the Landlord submitted with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On June 19, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, on June 21, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All of the evidence accepted as evidence for these proceedings has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or to keep all or part of the security deposit?

### Background and Evidence

The Landlord and the Tenants agree that:

- prior to the start of the tenancy the female Tenant occupied the rental unit for the period between August 16, 2018 to August 29, 2018 as short term rental;
- the tenancy began on September 01, 2018;
- the tenancy ended on February 28, 2019;
- the Tenants agreed to pay monthly rent of \$2,750.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,250.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- the rental unit was jointly inspected at the start of the tenancy;
- a condition inspection report was not completed at the end of the tenancy;
- the Landlord did not have written permission to keep any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The female Tenant stated that the Tenants provided a forwarding address to the Landlord, via email, on March 18, 2019. The Landlord acknowledged receiving the forwarding address by email, although she cannot recall the date it was received.

The Landlord is seeking compensation for fixing a bathtub leak, including costs of repairing the ceiling that was damaged as a result of the leak.

The Landlord and the Tenants agree that water leaked from the bathtub into a lower suite in September of 2018. The parties agree that the first incident was reported to the Landlord and that the Landlord had a plumber address the problem. The parties agree that a second leak was detected a few days later, which was reported to the Landlord.

The Landlord submitted an invoice from a plumbing company, dated September 26, 2018. The invoice indicates that the plumber “removed the overflow, cable tub drain”; that hair was removed from the line; and that the drain subsequently worked properly.

The Landlord submitted an invoice from a plumbing company, dated September 29. The invoice indicates that plumber confirmed that water was leaking from the overflow into the ceiling. The invoice provided a quote for installing a new overflow.

The Landlord stated that the plumber told her that the bathtub could accommodate higher water levels if she installed a new overflow. She stated that the plumber told her the leak was the result of the bathtub being filled higher than the overflow valve. She stated that after the first leak she told the Tenants that they should not use the bathtub.

The Tenants contend that the water leaking from the bathtub was normal wear and tear, for which they are not responsible. The female Tenant stated that the Tenants have never had a bath in the rental unit; that they shower in the bathtub; and that the bathtub never fills up during their showers. She agrees that after the first leak the Landlord told the Tenants they should not have baths, which was not a concern for the Tenants as they did not have baths. She speculated that the bathtub may have leaked because of hair left in the drain by previous occupants.

The Landlord is seeking compensation for cleaning the rental unit. She stated that the unit was not tidy at the end of the tenancy and that she paid \$120.00 to have it professionally cleaned. The Landlord submitted no documentary evidence, such as photographs, to support this part of her claim.

The female Tenant stated that the rental unit was spotless at the end of the tenancy.

### Analysis

On the basis of the undisputed evidence I find that this tenancy ended on February 28, 2019.

On the basis of the undisputed evidence I find that the Tenants provided the Landlord with a forwarding address in writing, via email, on March 18, 2019. In reaching this conclusion I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find

that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email in which the Tenants provided a forwarding address, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

Section 23(2) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. On the basis of the undisputed evidence I find that the rental unit was jointly inspected at the start of the tenancy.

Section 23(2) of the *Act* stipulates that the landlord must complete a condition inspection report at the start of the tenancy in accordance with the regulations. Section 24(2)(c) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. On the basis of the undisputed evidence I find that the Landlord's right to claim against the Tenants' security deposit for damage to the unit was extinguished because she did not complete a condition inspection report at the start of the tenancy.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit for damage to the unit has been extinguished, pursuant to section 24(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the Landlord has not yet returned the security deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenants.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

It is commonly understood that a bathtub overflow drain is designed to divert excess water from a bathtub into the bathtub drain before the water flows over the side of the tub. Even if the Tenants had a bath in the bathtub and they overfilled the tub, that water would have been diverted to the drain if the overflow drain had been functioning properly. I therefore find that the water that leaked from the bathtub into the ceiling was likely the result of a faulty overflow drain.

I find that the Landlord has submitted insufficient evidence to establish that the leak in the bathroom was the result of the actions or neglect of the Tenants. As I have concluded that the water leak was likely the result of faulty plumbing, I find that the Tenants are not obligated to pay for the plumbing repair or to pay for repairing the damage caused by the water.

In adjudicating this matter I have considered the invoice from a plumbing company, dated September 26, 2018, which declared that the plumber removed the overflow, cable tub drain; that hair was removed from the line; and that the drain subsequently worked properly. I find that this invoice indicates that the leak was related to a plugged drain, rather than misuse of the bathtub. As the leak happened within a month of the start of the tenancy, I find that the hair plugging the drain could have collected, at least partially, prior to the start of the tenancy.

In adjudicating this matter I have considered the invoice from a plumbing company, dated September 29, 2018, which declared that water was leaking from the overflow into the ceiling. I find that this information is of little evidentiary value as it does not declare why the overflow drain was leaking.

The invoice dated September 29, 2019 provides a quote for installing a new overflow drain. I find it highly unlikely that the plumber would have provided such a quote if the plumber believed the existing overflow drain was functioning properly. I find that the Landlord's testimony that she was told the bathtub could accommodate higher water levels if a new overflow was installed supports my conclusion that the existing overflow was not functioning properly. This information, in my view, suggests that if a new overflow drain was installed it would successfully drain the bathtub if there was an excess amount of water in the bathtub.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit requires cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that the rental unit required cleaning at the end of the tenancy or that refutes the Tenants' submission that the unit was left in clean condition at the end of the tenancy. As the Landlord has failed to meet the burden of proving that the rental unit required cleaning, I dismiss the Landlord's claim for cleaning.

I find that the Landlord has failed to establish the merit of this Application for Dispute Resolution and I therefore dismiss the application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has failed to establish that she is entitled to retain any portion of the Tenants' security deposit.

The Tenants are entitled to the return of double their security deposit, which is \$2,500.00 and I therefore grant them a monetary Order for that amount. . In the event the Landlord does not voluntarily comply with this Order, it may be served on the

Landlord, filed with the Province of British Columbia Small Claims Court 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: July 05, 2019

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Residential Tenancy Branch