



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND-S FF

### **Introduction**

This hearing was convened in response to an *un-amended* application by the landlord filed September 06, 2019 under *the Residential Tenancy Act* (the Act) for loss under the tenancy agreement in the amount of \$703.74 and to recover the filing fee for this matter. The landlord holds the security deposit of the tenancy which they seek to apply in partial satisfaction of the claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties were also provided with opportunity to mutually resolve and settle this dispute and/or all matters of the tenancy to their finality, to no avail. The parties acknowledged exchanging evidence as has been provided to this proceeding. The landlord and tenant were given opportunity to orally provide their respective *relevant* evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all the *relevant* evidence that they wished to present.

### *Preliminary matters*

The landlord submitted evidence pursuant to matters for which they believed formed an amendment to this matter, but in fact the landlord acknowledged not having not filed an amendment following their original application. As a result, any claim sought by the landlord following their original application was dismissed with leave to reapply. The hearing proceeded solely on the merits of the original application.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amount(s) claimed?

### **Background and Evidence**

The undisputed *relevant* evidence in this matter is as follows. The tenancy agreement states that the tenancy started October 01, 2015. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$1000.00 which the landlord retains in trust. At the start of the tenancy the parties conducted a mutual condition inspection of the rental unit in accordance with the Act. At the end of the tenancy the landlord and tenant agreed they conducted an inspection; however, the landlord did not send to the tenant a copy of the move out inspection nor submitted same into evidence.

The landlord seeks compensation for carpet cleaning in the invoiced amount of \$331.79, for 2 dryer repairs dated December 27, 2018 (\$191.45) and September 05, 2019 (\$196.00) respectively.

Both parties agreed that at the end of the tenancy the landlord would be compensated for carpet cleaning, as per the tenancy agreement addendum. The parties reiterated their agreement during the hearing that the landlord is owed the claimed amount for carpet cleaning and the landlord will hereby be granted this amount.

The landlord claims the tenant is responsible for a dryer repair made in December 2018 in which the dryer repair technician provided an invoice stating the dryer “*no start*”, “*replaced broken belt and oiled all rollers*”. The technician’s invoice further stated they, “*Removed sock and lint from lint filter housing. Explained how socks get into lint filter housing when loading or unloading dryer*”. The invoice additionally states provision of a (new) belt and that, “*lint screen must be cleaned out every load*”. The landlord testified the tenant let the sock into the lint filter housing which resulted in the dryer requiring the repair expenditure.

The tenant testified they notified the landlord a month before the dryer repair that the lint catcher tray did not sit flush and was catching and damaging their clothes, and that following the technician’s repair visit the dryer again operated, however the lint tray still did not sit flush. The tenant testified they continued to report the lint tray issue to the landlord for month’s thereafter and that the dryer made a noise. The tenant testified being told they were misusing the dryer. The dryer was then deemed unsafe, unplugged, and to be replaced. However ultimately the dryer was again repaired a second time September 05, 2019.

The landlord claims the tenant responsible for the second dryer repair made September 05, 2019 in which the dryer repair technician provided an invoice stating the dryer, “*Noisy Removed drawstring from around blower fan and replaced broken vent hose*”.

The invoice additionally states provision of a (new) vent hose. The landlord testified the tenant somehow let the drawstring into the dryer resulting in the dryer requiring repair and therefore responsible for the repair cost.

The tenant testified as previously that the dryer lint tray did not sit flush despite repeated notice to the landlord of the problem, however, testified they repeatedly received from the landlord that they were misusing the dryer. The tenant submitted that the problem, was that the offset lint tray 'sucked' a drawstring during a cycle.

### **Analysis**

*The full text of the Act, sections of the Act stated herein, and other referenced resources, can be accessed via the Residential Tenancy Branch website at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

Pursuant to the parties' agreement, the landlord is granted **\$331.17** for carpet cleaning.

The landlord seeks to hold the tenant responsible for damage to the dryer pursuant to the tenant's claimed misuse of the dryer. The tenant denies misusing the dryer. The landlord bears the burden of proof that the tenant is responsible for damage to the dryer and the resulting repair costs.

I find that **Section 7** of the Act provides as follows in respect to claims of damage or loss as the landlord's application in this matter portrays.

#### **Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test of **Section 7** is that the landlord will be successful in their claims if they satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the tenant in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the landlord followed their statutory duty pursuant to Section 7(2) to do whatever is reasonable to minimize or mitigate the loss.

**Section 7** effectively places the burden of proof onto the landlord to prove their claims on application. In this matter I find that some evidence makes reasonable sense, and other evidence submitted does not make sense.

In respect to the landlord's claim for the December 2018 dryer repair, while I may accept the landlord's premise by way of their technician's explanation of how a sock can enter the lint filter housing impeding proper operation of their dryer, the landlord's evidence states that the dryer repair addressed a failure to operate or otherwise start because of a "broken belt", for which the tenant is not responsible for such wear and tear. As a result, their claim for **this first** dryer repair must fail and is **dismissed**.

In respect to the landlord's claim for the September 05, 2019 dryer repair, I find the landlord relies on the technician's invoice information to support their belief the tenant was negligent in their use of the dryer, by "letting" a drawstring past the lint filter housing. While I may accept the technician's invoice information that they removed a drawstring from around the blower fan, I find their information (landlord's evidence) does not state the cause for the occurrence nor implicates the tenant's conduct. I find that the technician's invoice information also states they replaced a vent hose because it was broken. Again, I find the evidence does not implicate the tenant's conduct caused breakage of the vent hose. I do find that a dryer operates by venting outward / outside through the vent hose. In the absence of other evidence and on balance of probabilities, I find the evidence points to a likelihood that if the tenant indeed let a drawstring past the lint filter housing, the broken vent hose allowed it back toward the internal blower fan. As a result of all the above I am not satisfied the landlord has established, on a balance of probabilities their loss occurred solely because of the actions or neglect of the tenant. Therefore, their claim for **this second** dryer repair must also fail and is **dismissed**.

**Residential Tenancy Policy Guideline #17**, in relevant part, states as follows,

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

The Arbitrator will Order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this matter the landlord filed their application requesting the retention of the security deposit in partial satisfaction of their monetary claims. Because their claims have, in part, been dismissed it is appropriate that I Order the return of any balance of the tenant's security deposit back to the tenant.

The landlord currently holds the security deposit in the amount of \$1000.00 and I find that they are entitled to retain \$331.79 of it for carpet cleaning. I find the parties agreed to this deduction before the landlord filed their application, therefore, I am not inclined to make the tenant pay for the application filing fee.

The security deposit of the tenant is hereby offset as follows:

Security deposit	\$1000.00
Landlord's award	-\$331.79
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Return to tenant	\$668.21

## **ORDER**

**I Order** that the landlord may retain \$331.79 of the tenant's security deposit, and **I grant** the tenant a Monetary Order the balance in the amount of **\$668.21**. If necessary, this Order may be registered in the Small Claims Court and enforced as an Order of that Court.

## **Conclusion**

The landlord's application is granted, in the above terms, and the balance of their original application is dismissed.

The tenant is given a monetary Order in the above terms.

**This Decision is final and binding.**

*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: January 14, 2020

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Residential Tenancy Branch