



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FF

### Introduction

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated March 18, 2020, which should be read in conjunction with this decision.

The adjudicator found the submitted documentary evidence in the tenant's application did not meet the prescribed criteria for a non-participatory proceeding under the Direct Request process. The adjudicator noted that the condition inspection report (CIR) indicates the tenant authorized a deduction from the security deposit in the amount of \$1,386.07, for a water bill of \$150.54 and professional cleaning and repairs of \$1,235.53.

The adjudicator also noted that the tenant indicated that they only authorized deductions for the water bill.

The adjudicator explained that an ex-parte proceeding does not allow for a clarification of the facts, as there is no participatory hearing, where both sides may present evidence.

Present at the participatory hearing were the tenant, his wife, his daughter and the landlord.

The hearing process was explained and the participants were given an opportunity to ask questions about the hearing process.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

To clarify, the landlord submitted a written letter, in which she refers to the tenant's wife, SL, as a tenant as well, as SL negotiated the monthly rent.

#### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to return his security deposit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant said this tenancy began on May 1, 2018, and ended on December 31, 2019. The landlord said the tenancy ended on January 1, 2020.

The tenant paid a security deposit of \$1,450 at the beginning of the tenancy.

The parties submitted copies of the written tenancy agreement and the CIR, containing the results of the move-out and move-in inspection.

In support of their application, the tenant submitted that on December 31, 2019, the date of the move-out inspection, they provided their written forwarding address to the landlord on the CIR.

The tenant submitted that since that time, the landlord mailed them a copy of the CIR, which appeared to have authorized the landlord to make deductions from their security deposit. Along with the CIR, the landlord sent a cheque in the amount of \$63.93, representing the balance of their security deposit after the landlord made deductions.

The tenant submitted that when they signed the CIR after the move-out inspection, they consented to the water bill; however, there were other deductions for professional cleaning and repairs listed in the section on the form where the tenant agreed to the "following deductions from my security and/or pet damage deposit:" of which they were unaware.

The tenant submitted that the landlord filled in these amounts after they signed it.

*Landlord's response-*

At the hearing and in her written letter sent into evidence, the landlord confirmed that she wrote in the deductions after the tenant signed the documents. The deductions were \$150.54 for a water bill, and professional cleaning and repairs for \$369.60, 447.30, and 418.63.

The landlord's written tenancy agreement, addendum 15, allows the landlord to make deductions from the tenant's security deposit at the end of the tenancy as provided for in the Lease. Some deductions the landlord may make is for certain repairs.

The landlord submitted that she was entitled to make these deductions under the written tenancy agreement, in the portion of the agreement under Security Deposits.

That portion read:

**"For the purpose of this clause, the Landlord may charge the Tenant for professional cleaning and repairs if the Tenant has not made alternate arrangements with the Landlord."**

The landlord wrote that this clause was the tenant's consent to deduct from the security deposit the amount of professional cleaning and repairs.

The landlord said that the tenants knew about the condition of the rental unit after the move-out inspection and did not deny filling in the deductions after the tenant signed the CIR.

### Analysis

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

Despite subsection (1), Section 38(4) of the Act allows a landlord to retain the tenant's security deposit at the end of a tenancy if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

The landlord relies on the written tenancy agreement as authority to retain from the tenant's security deposit an undetermined amount for cleaning and repairs.

Residential Tenancy Branch (RTB) Policy Guideline 17 states that a tenancy agreement must not provide that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.

Additionally, landlords or tenants may not avoid or contract outside the Act and any clause or term in the tenancy agreement which attempts to do so, is not enforceable. I find the term in the landlord's written tenancy agreement allowing for

In this case, I find the evidence shows that the tenant did not agree in writing that the landlord could retain the security deposit to pay a liability or obligation of the tenant, other than the water bill. This agreed upon deduction was reflected on the tenant's application.

The undisputed evidence is that the landlord unilaterally altered, or changed, the CIR after the tenant signed the document without their knowledge or consent, by writing in three different amounts for a professional clean and repairs, which she later deducted from the tenant's security deposit.

In other words, when the tenant signed the CIR, there was one agreed deduction for the water bill, but that portion on the form was blank as to the professional clean and repairs. When the tenant received the CIR, after the landlord mailed it on January 13, 2020, the alterations, or changes, appeared on the document.

Further, the landlord should be aware that under the Criminal Code of Canada, a false document includes making a material addition to a genuine document. If the landlord should have any questions about adding a material addition to a signed document, such as the condition inspection report, she should consult with legal counsel.

In the case before me, the evidence shows that the tenancy ended on or about December 31, 2019, the date of the move-out inspection, and that the landlord received the tenant's forwarding address on that date, on the CIR.

As I have found the tenant did not provide written authority for the landlord to make a deduction from their security deposit, other than the water bill, due to the material alteration on the CIR, I find the landlord was obligated to return the tenant's security deposit of \$1,450, less the agreed upon amount for the water bill of \$150.54, for a total of \$1,299.46, or make an application for dispute resolution claiming against the security deposit by January 15, 2020. In contravention of the Act, the landlord made an unauthorized deduction from the tenant's security deposit before returning a portion, without filing an application.

I therefore find the tenant is entitled to a total monetary award of **\$2,634.99**, comprised of their security deposit of \$1,450, less the authorized amount of \$150.54, or **\$1,299.46**, doubled to **\$2,598.92**, less the amount previously returned to the tenants of **\$63.93** plus the filing fee paid for this application of **\$100**, which I have awarded them due to their successful application ( $\$1,450 - \$150.54 = \$1,299.46 \times 2 = \$2,598.92 - \$63.93 + \$100 = \$2,634.99$ ).

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and 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.

***Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.***

Conclusion

The tenant's application for monetary compensation for a return of his security deposit, which I have doubled, is granted as they are awarded a monetary order for **\$2,634.99**.

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: April 23, 2020

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Residential Tenancy Branch