



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunstar Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      Landlords: MNDL-S, MNDCL-S, FFL  
                                 Tenants: MNSDS-DR, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on August 28, 2020 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution by direct request was made on September 23, 2020 (the “Tenant’s Application”) and was adjourned to a participatory hearing as the Landlords had already applied to retain the Tenant’s security deposit. The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlords’ Agent T.H. and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Are the Landlords entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
4. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that the tenancy started on March 1, 2015. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,758.90 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$825.00 which the Landlords continue to hold. The parties agreed that the tenancy ended on August 15, 2020.

The Landlords' Claim

The Landlords' monetary claims were set out on a Monetary Worksheet provided in the Application. T.H. testified that the Landlords are seeking monetary compensation in the amount of \$1,045.40 in relation to further cleaning and repairs which were required in the rental unit at the end of the tenancy.

T.H. stated that the rental unit was left unclean, which required the Landlords to employ the services of a cleaner who attended and cleaned the rental unit for 8 hours with one other cleaner, at a cost of \$628.95. The Landlords provided a written statement from the cleaners which described the state of the rental unit prior to cleaning as "*the worst shape our team has seen*". The Landlords provided pictures of the rental unit, a copy of the condition inspection report as well as the cleaning invoice in support of this claim.

T.H. stated that the carpets had also not been cleaned at the end of the tenancy. T.H. stated that the Landlords were required to employ the services of a carpet cleaner at a

cost of \$156.45 to clean the carpets in the rental unit. The Landlords provided pictures, a condition inspection report, and an invoice in support.

T.H. stated that there were some repairs which needed to be completed throughout the rental unit at the end of the tenancy which includes; patching holes in the garage, securing a bathroom fixture, replace three outlet covers, and replacing 15 light bulbs. The Landlords are claiming \$260.00 for the work that was completed. The Landlords provided pictures, a condition inspection report, and a copy of the invoice in support.

In response, the Tenant stated that she cleaned the rental unit at the end of the tenancy, however, acknowledged that she did clean behind the appliances. The Tenant agreed during the hearing to compensate the Landlords \$156.45 for carpet cleaning. Lastly, the Tenant agreed that she caused some damage in the garage, and that she did not replace the light bulbs, but stated that she had purchased light bulbs which she left in the rental unit. The Tenant disagreed with the claim to replace the outlet covers.

Finally, the Landlords are seeking the recovery of their \$100.00 filling fee as well as to retain the Tenant's security deposit towards their monetary claims.

#### The Tenant's Claim

The Tenant is seeking double the return of her security deposit as the Landlords did not provide her with an opportunity to take part in the condition inspection of the rental unit at the end of the tenancy, as well as the Landlords have not returned the Tenant's security deposit within 15 days after receiving the Tenant's forwarding address. The parties agreed that the tenancy ended on August 15, 2020 and that the Landlords received the Tenant's forwarding address on August 17, 2020. The Tenant stated that the parties had a move out inspection scheduled for August 15, 2020, however, just prior to the scheduled inspection, the Landlords' Agent cancelled the walkthrough.

The parties agreed that there was some delay due to the fact that the Landlords' daughter wanted to be in attendance for the walk-through inspection, however, her availability was limited. The Tenant stated that no further offers to conduct a move out inspection were provided. The Tenant stated that the Landlord is required to provide a Notice of Final Opportunity to Schedule a Condition Inspection, which was not served to the Tenant. The Tenant provided a copy of the text conversation between the Tenant and the Landlords' Agent in support.

The Tenant stated that the Landlords have not returned any portion of her security deposit and that the Landlords did not provide her with a copy of the inspection condition report, or a list of deduction that the Landlords were retaining until she received the Landlords' Application.

Lastly, the Tenant is claiming \$100.00 to recover the filing fee paid to make the Tenant's Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

### The Landlords' Claim

During the hearing, the Tenant agreed to compensating the Landlords for the cost associated with cleaning the carpet in the rental unit. As such, the Landlords are awarded compensation in the amount of **\$156.45**.

The Landlords are also claiming \$628.95 for cleaning, as well as \$240.00 for repairs. According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

In this case I find that the Landlords have provided sufficient evidence to demonstrate that the rental unit was not left reasonably clean. I accept that further cleaning was required, therefore, I find that the Landlords are entitled to monetary compensation in the amount of **\$628.95** for cleaning.

I further find that the Landlords have provided sufficient evidence that the rental unit required repairs at the end of the tenancy. As such, I find that the Landlords are entitled to monetary compensation in the amount of **\$240.00** for repairs.

Having been successful with their Application, I find the Landlords are entitled to the recovery of their **\$100.00** filling fee.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award of \$1,124.40, which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Cleaning:	\$628.95
Carpet cleaning:	\$156.45
Repairs:	\$240.00
Filling fee	\$100.00
<b>TOTAL:</b>	<b>\$1,124.40</b>

### The Tenants' Claim

With respect to the Tenants' claim for the recovery of double their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenant's argument that the Landlords extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlords have also claimed for monetary loss relating to cleaning. As a result, whether Landlords extinguished their right to retaining the security deposit or not has no bearing on the outcome of the current Applications.

I accept that the tenancy ended on August 15, 2020 and that the Tenant provided the Landlords with her forwarding address in writing via email, which was received by the Landlord on August 17, 2020. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until September 1, 2020 to repay the deposit or make a claim against it. I find that the Landlords submitted their Application on August 28, 2020, which is within the time limit permitted under the *Act*. Accordingly, I find the Tenant is not entitled to the return of double the amount of the deposit.

Having not been successful in her Application, I find the Tenant is not entitled to the recovery of their filling fee.

Pursuant to section 67 of the *Act*, I find that the Landlords have demonstrated an entitlement to retain the security deposit in the amount of \$825.00 in partial satisfaction of the monetary award granted. I grant the Landlords with a monetary order in the amount of \$300.40 (\$1,124.40 - \$825.00).

Conclusion

Pursuant to section 67 of the Act, the Landlords are granted a monetary order in the amount of \$300.40. The monetary order must be served on the Tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 10, 2020

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Residential Tenancy Branch