



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDL-S, FFL, MNSDS-DR, FFT

### Introduction

The landlords seek to retain a portion of the tenant's security deposit as compensation for cleaning and repairs to a carpet, pursuant to sections 38(6) and 67 of the *Residential Tenancy Act* ("Act"). Conversely, the tenant seeks the return and doubling of her security deposit pursuant to section 38 and 67 of the Act. Both parties seek recovery of the application filing fee under section 72 of the Act.

The landlords filed their application for dispute resolution on September 9, 2020 and the tenant filed her application on November 7, 2020. A teleconference hearing was held on December 18, 2020. An agent for the landlords (hereafter the "landlord") and the tenant attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

### Issues

1. Are the landlords entitled to compensation as claimed?
2. Is the tenant entitled to the return (and doubling) of her security deposit?
3. Is either party entitled to recovery of the application filing fee?

### Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on September 1, 2019 and ended on August 31, 2020. Monthly rent was \$4,000 and the tenant paid a security deposit of \$2,000; the landlords hold the security deposit in trust pending the outcome of these applications. A copy of the written tenancy agreement was submitted into evidence.

The landlord seeks \$460.00 in compensation to pay for carpet cleaning and repairs. He testified that at the beginning of the tenancy there were no issues with the carpets. This is evidenced by a Condition Inspection Report which was completed at the start of the tenancy. However, at the end of the tenancy, there was a noticeable coffee stain on the carpet of the master bedroom.

This is also evidenced in the Condition Inspection Report along with photographs that were submitted into evidence.

The landlord retained professional carpet cleaners who were unable to remove the stain, and who advised that the carpet would need to be repaired. Repairs were then made by a carpet repair company. Receipts for both the cleaning and the repair were provided into evidence. The landlord testified that the carpet was brand new, having been installed within the last year when the brand-new condo was built in 2019.

The tenant testified that she provided her forwarding address to the landlords on the Condition Inspection Report at the end of the tenancy on August 31, 2020. She confirmed that she did not authorized the landlords to retain any of the security deposit and that she disputes his claim.

Regarding the carpet, she testified that she had it professionally cleaned, but not to the landlords' satisfaction. She then agreed to pay for additional cleaning that the landlord would arrange. Ultimately, stain removal by both companies was unsuccessful. The tenant submitted that the carpet was a "bad quality carpet" and that the stain could be attributable to wear and tear. Moreover, she argued that the submitted photographs had been manipulated in Photoshop to make it look worse than it really did.

Finally, she argued that the two receipts submitted by the landlord were "vague" because they did not reference what, exactly was, performed. I note that one receipt includes the statement "carpet repair" and the other receipt includes the statement "carpet shampoo."

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Landlords' Claim for Compensation for Carpet**

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states 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.

First, whether the photographs submitted were somehow manipulated (though the tenant provided absolutely no evidence that they were manipulated), it is clear and incontrovertible that there is a noticeable stain on a carpet. Coffee stains are, unfortunately, rather pronounced, and especially so on light-coloured carpets. Coffee stains are, I further find, something that might be attributable to reasonable wear and tear in a kitchen or dining room, but not in a bedroom.

Taking into consideration the documentary and oral evidence of the landlord, I find that the tenant breached section 37(2) of the Act by causing coffee staining of the carpet. I am not persuaded by the tenant's defense that the stain can be attributable to reasonable wear and tear.

Second, but for the tenant's breach of the Act, the landlords would not had to incur what I find are reasonable costs in first attempting to clean the carpet (which is, I note, a reasonable step taken in mitigating losses) and then having to repair the carpet. The costs amount to \$460.00. As the carpet was essentially brand new (or, within a year old) of the tenancy starting, I apply no depreciation to the losses suffered by the landlords.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation in the amount of \$460.00.

In respect of the landlords' claim for the \$100.00 application filing fee, as the landlords were successful in their application, I grant them this amount pursuant to section 72 of the Act, for a total award of \$560.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain \$560.00 of the tenant’s security deposit in full satisfaction of the above-noted award.

### **Tenant’s Claim for Return and Doubling of Security Deposit**

Section 38(1) of the Act states the following regarding what a landlord’s obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the tenancy ended on August 31, 2020, and the landlords received the tenant’s forwarding address on that date. The landlords made an application for dispute resolution 9 days later, on September 9, 2020, within the 15-day period as required by the Act.

Section 38(6) of the Act states that

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, as the landlords complied with subsection 38(1) of the Act, they are not required to pay the tenant double the amount of the security deposit. Therefore, the tenant's claim for a doubling of the security deposit is dismissed without leave to reapply.

Accordingly, I dismiss her claim for recovery of the application filing fee under section 72 of the Act.

However, the tenant is entitled to the return of the balance of her security deposit that is not being awarded to the landlords, which is \$1,440.00. The landlords are ordered to return this amount of the tenant's security deposit to her within 15 days of the receipt of this Decision. A monetary order for the tenant is issued in conjunction with this Decision, should it be necessary for the tenant to enforce my order.

#### Conclusion

**The landlords' application is granted, and they are entitled to retain \$560.00 of the tenant's security deposit in full satisfaction of the award granted.**

**The tenants' application for doubling of the security deposit is dismissed, without leave to reapply.**

**I order the landlords to return \$1,440.00 of the security deposit to the tenant within 15 days of receiving this Decision.**

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 18, 2020

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Residential Tenancy Branch