



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCL-S, FFL  
                                 MNSD, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on May 4, 2022. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenant’s Application for Dispute Resolution was made on September 6, 2022. The Tenant applied for the return of their security deposit and the return of their filing fee.

The Tenant and two agents for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Tenant entitled to the return of their security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on April 1, 2022, that rent in the amount of \$2,450.00 was payable on the first day of the month, and that the Tenant had paid a security deposit of \$1,225.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement with addendum “HOLLYBURN PROPERTIES LIMITED STANDARD CHARGES” into documentary evidence.

The parties agreed that a move-in inspection was completed for this tenancy. The Landlord testified that a full inspection was completed of the rental unit on the approved RTB form and that a separate written move-in inspection was completed of the furnishing included in this tenancy when this tenancy began. The Landlord submitted a two-part move-in inspection into documentary evidence.

The parties agreed that the Tenant moved out of the rental unit on April 30, 2022, in accordance with the tenancy agreement and that a move-out inspection of the rental unit was completed on the approved RTB form. The Landlord submitted a one-part move-out inspection form into documentary evidence.

The Landlord confirmed, when asked, that at the end of this tenancy, only a written inspection of the rental unit was completed but not a written inspection of the furnishing. The Landlord was asked why a written move-out inspection of the full tenancy, rental unit and furnishing, was not completed for this tenancy. The Landlord testified that the move-out inspection of the furnishings was not required as the tenancy agreement included a flat cleaning rate for the furnishings at the end of the tenancy.

The Landlord testified that section seven of the tenancy agreement included a cleaning charge of \$200.00 for the furnishings included in this tenancy, which states the following:

**FEES AND CHARGES.** The tenant acknowledges receipt, prior to signing this Agreement, of a copy of the landlord's Standard Charges setting out non-refundable fees and charges payable by the tenant for certain services or facilities that may be provided by the landlord outside the scope of this Agreement including, without limitation, the repair and cleaning of the residential unit at the end of the tenancy, if not completed by the tenant, the tenant hereby requests that the landlord provides such services or facilities and agrees to pay all fees and charges for such services and facilities provided. The tenant further acknowledges and agrees to pay all fees and charges specified in the landlord's Standard Charges and acknowledges and agrees that the specified fees and charges are either a genuine pre-estimate of the cost to the landlord to provide the specified items, services or facilities or an amount prescribed by the Act.

The Landlord testified that the addendum to the tenancy agreement "HOLLYBURN PROPERTIES LIMITED STANDARD CHARGES" states the following:

"Flat rate cleaning fee for furnished unit \$200.00"

The tenancy agreement was reviewed with the Landlord during the hearing and was asked why the confirmation initial boxes on the tenancy agreement were not initialled by either the Tenant or the Landlord. The Landlord testified that there were system issues at the time the tenancy agreement was signed.

The Tenant testified that they had no knowledge that the Landlord had included a flat rate cleaning fee in their tenancy agreement. The Tenant testified that they did not believe that Act allowed the Landlord could precontract to a mandatory cleaning charge at the end of a tenancy.

The Tenant testified that everything was cleaned at the end of the tenancy including the full rental unit and all the furnishings, as well as bedding linens and towels. The Tenant testified that they should not be required to pay this fee. The Tenant submitted 36 pictures of the rental unit at the end of tenancy into documentary evidence.

When asked the Landlord agreed that they had not completed a written move-out inspection of the furnishings included in this tenancy agreement that they are claiming against in these proceedings. The Landlord was asked to present evidence that the furnishings were returned dirty at the end of this tenancy. The Landlord testified that a deep and disinfecting cleaning was required due to covid.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

In this case, the Landlord is seeking to enforce the payment of a \$200.00 furnishing cleaning fee, contracted under the tenancy agreement. Section 7 of the *Residential Tenancy Regulation* (the “*Regulation*”) states the following regarding fees charged by a landlord during a tenancy:

#### ***Non-refundable fees charged by landlord***

*7 (1) A landlord may charge any of the following non-refundable fees:*

- (a) direct cost of replacing keys or other access devices;*
- (b) direct cost of additional keys or other access devices requested by the tenant;*
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;*
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;*
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.*

*(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.*

Pursuant to section 7 of the *Regulation*, I find that a landlord is prohibited from including mandatory charges for cleaning at the end of a tenancy. I have reviewed the Landlords tenancy agreement, and I find that the Landlord has written a tenancy agreement that allows for mandatory cleaning fees to be charged to the Tenant, regardless of the condition of the rental at the end of the tenancy.

I find that this Landlord has breached the *Regulation* by writing a tenancy agreement term that would allow for a mandatory cleaning fee to be charged at the end of the tenancy. Section 5 of the *Act* states the following regarding attempts to contract contrary to the *Act* or the *Regulation*:

***This Act cannot be avoided***

*5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

*(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

I find that the Landlord has attempted to contract for a fee that is not allowable under the *Regulation*. Consequently, I find that the term in this tenancy agreement regarding the payment of a \$200.00 furnishings cleaning fee to be of no effect and I dismiss the Landlord claim to collect this fee in its entirety.

I acknowledge the Landlord's arguments that due to covid a deep and disinfecting cleaning was required in the rental unit before a new renter could move-in. However, section 37(2) of the *Act* states the following regarding a tenant's responsibility for cleaning at the end of a tenancy:

***Leaving the rental unit at the end of a tenancy***

*37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

*(2) When a tenant vacates a rental unit, the tenant must*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

Additionally, the Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Rental Premises goes on to state the following:

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 or Manufactured Home Park Tenancy Act (the Legislation).**"

I find that pursuant to section 37(2) of the *Act* and Residential Tenancy Policy Guideline #1 a landlord may not pass on the cost of or attempt to pre-contract to the costs of deep or disinfecting cleaning at the end of tenancy, as the *Act* only requires a rental unit to be returned reasonably clean.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover their filing fee paid for their application

As for the Tenant's claim for the return of the doubled value of the security deposit for this tenancy. Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

***Return of security deposit and pet damage deposit***

***38 (1) 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.*
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that*
  - (a) the director has previously ordered the tenant to pay to the landlord, and*
  - (b) at the end of the tenancy remains unpaid.*
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.*
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on April 30, 2022, in accordance with the Act. In addition, I also accept agreed-upon testimony of these parties that the Tenant provided their forwarding address to the Landlord on May 3, 2022, by email. Normally, the dates provided would have allowed the Landlords until May 18, 2022, to comply with section 38(1) and file their claim against the security deposit.

However, I also accept the testimony of the Landlord that they did not conduct a written move-out inspection of the furnishings rented to the Tenant within this tenancy; even though their documentary evidence clearly shows that they completed separate and full written inspection of these same furnishings rented to the Tenant under this tenancy agreement at the beginning of this tenancy. As the Landlord included furnishings in this

tenancy agreement and conducted a full inspection of these furnishings at the beginning of this tenancy, I find that the Act required this Landlord to complete a full written inspection of the furnishings at the end of this tenancy as well.

Section 35 of the Act states the following regarding the move-out inspection requirements:

***Condition inspection: end of tenancy***

**35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,  
or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

I find that the Landlord breached section 35 of the Act when they did not conduct a written move-out inspection of the furnishing included in this tenancy at the end of this tenancy. Section 36(2) of the Act outlines the consequence for a landlord when the inspection requirements are not met.

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *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*

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*



Pursuant to section 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the security deposits for damage to the residential property for this tenancy. Accordingly, the Landlord had until May 18, 2022, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security deposit for this tenancy in full to the Tenant, as the Landlord had extinguished their right to claim against the deposit for damages caused during this tenancy.

However, in this case, the Landlord did not return the security deposit, as required, but instead made a claim against the security deposit for damages even though they had extinguished their right to make this claim when they did not complete the move-out inspection as required by the *Act*.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposit.

***Return of security deposit and pet damage deposit***

- 38 (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.*

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven they are entitled to the return of double their deposit. I find for the Tenant, in the amount of \$2,450.00, due to the Landlord's breach of the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenant a monetary order of \$2,550.00, consisting of \$2,450.00 in the recovery of the doubled value of their security deposit for this tenancy, and \$100.00 in the recovery of the filing fee for this hearing.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I find that the Landlord breached section 5 of the *Act* and section 7 of the *Regulation* by including a term in the tenancy agreement to charge a fee not allowable under the *Act*.

I find that the value of the security deposit paid for this tenancy has doubled in value due to the Landlord's breach of sections 35 and 38 of the *Act*.

I grant the Tenant a Monetary Order in the amount of \$2,550.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: January 18, 2023

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Residential Tenancy Branch