



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL  
                              MNSDS-DR, FFT

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The hearing was scheduled to be heard on March 10, 2023, however I adjourned the hearing to March 15, 2023 due to issues with evidence. My Interim Decision was provided to the parties. On March 15, 2023 the parties agreed that all evidence has been exchanged, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for cleaning?

- Should the landlord be permitted to keep all or part of the security deposit in satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on March 1, 2017 and ended on July 31, 2022. Rent in the amount of \$850.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On February 8, 2017 the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided for this hearing. The parties attended the rental unit for a move-out condition inspection, however the parties did not agree and didn't finish the inspection.

The tenant had given notice to vacate the rental unit, and on July 4, 2022 the landlord gave the tenant instructions on how the suite was to be cleaned. The move-out condition inspection was scheduled for August 2, 2022, however there was a scene; the landlord had a few issues with some stuff and made it quite clear, telling the tenant it was filthy. The landlord thought 3 or 4 hours of cleaning was still to be done. The tenant got worked up and called a man in. There was some screaming, and the landlord told the tenant and the man to get out of the landlord's house, and they left.

The landlord received the tenant's forwarding address in writing on August 5, 2022.

The landlord has provided a Monetary Order Worksheet claiming \$120.00 for cleaning, being \$30.00 per hour including supplies, and recovery of the \$100.00 filing fee for this application. The oven had not been cleaned, and photographs of the rental unit, including the oven have been provided for this hearing. The landlord did not know that she could return a portion of the security deposit. The landlord reached out to the tenant to work with her, but the tenant didn't respond. The carpets were 15 years old, so the tenant would not have had to clean them; the landlord was going to replace them. The tenant said she was trying to find a cleaning company. The tenant and the

man did a quick rush through at the move-out condition inspection, starting around 6:30 or 7:00 p.m., but had wanted to do it at 10:00 p.m. The landlord told the tenant that wouldn't work, and the parties agreed to do it on August 2.

After the landlord sent the landlord's paperwork to the tenant, and after receiving the tenant's forwarding address, the landlord blocked the tenant's emails within a couple of days.

There was no damage to the rental unit. The landlord had some work done on the rental unit and re-rented December 12, 2022.

**The tenant** testified that her fiancé had been helping the tenant move out. When the tenant told the landlord she was getting engaged and moving out, the landlord became extremely rude and her attitude changed. The tenant lived in the rental unit for 5 years.

The tenant went into the rental unit for the move-out condition inspection and her fiancé waited in the car. The landlord was in a bad mood and the tenant kept her distance behind the landlord. The landlord said she had a huge issue with cleaning, and the tenant thought she was joking. The landlord pointed to a tiny hair in a drawer and said it was filthy. A video has been provided for this hearing. The parties went into the bathroom and the landlord bent down onto the floor pointing to the toilet. The tenant had done hours of cleaning. The rental unit had to be aired out due to cleaning products.

The tenant's fiancé went inside, but the landlord didn't like having a witness present. The tenant was there to do the inspection, and caused no scene whatsoever, but said that the tenant wasn't paying the landlord for cleaning that the tenant already did. The landlord told the tenant to drop the key and get out. The parties didn't go through the house at all.

**The tenant's witness** is the tenant's fiancé and testified that he was at the rental unit on August 2, 2022 for the final inspection. When the witness and tenant arrived, they saw the landlord pacing at the gate. The tenant went in by herself and within a few minutes the tenant called the witness to go in. The oven had been pulled out from its slot into the dining room and the landlord was saying it was a mess, due to popcorn under the oven. The witness said that it didn't need to be pulled out; that's normal wear and tear. It's stamped as a 2016 model, so that's about 7 years of use.

The landlord found a hair in a drawer and said she would charge 3 hours at \$30.00 per hour. The witness said that it didn't seem reasonable because the tenant and witness had already cleaned. The hair in the drawer was brought up several times and the landlord seemed adamant on charging for cleaning. It could have been a 1 minute conversation, but the hair was the tipping point for the landlord.

When the tenant and witness left the suite, the landlord was saying, "Get out, get out, get out. You are a slob, this place is a mess and I am through with this," while muscling the tenant and witness out, closed the door and locked it. The landlord didn't want to do a move-out condition inspection.

The witness also testified that while moving out, the landlord was working from home. The tenant hired a company to move furniture out, and they broke down tables and things, and it took about 1 ½ or 2 hours. The landlord was yelling out the window saying to keep it down because she was working.

The tenant informed the landlord when cleaning was done, allowing the rental unit to be shown. The tenant offered to do the move-out condition inspection, but the landlord put the tenant off until August 2. It had nothing to do with the long weekend; the witness and tenant had no plans and wanted to get it done by the end of July. The landlord wanted to push it to the Wednesday, on her terms, when she wanted, and the tenant didn't have any say.

#### SUBMISSIONS OF THE LANDLORD:

The landlord was not mad that the tenant was leaving; the landlord would be able to re-rent for double the amount after re-modeling.

#### SUBMISSIONS OF THE TENANT:

The tenant has provided series of text messages for this hearing. When the tenant moved in, the rental unit wasn't perfectly clean.

#### Analysis

A landlord is required to return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit, or part thereof, within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case, the landlord testified that the tenant's forwarding address was received in writing on August 5, 2022. The landlord kept the entire \$425.00 security deposit, claiming \$120.00 for cleaning. The landlord's application was made on August 18, 2022, which is within the 15 day period, however the landlord ought to have returned the portion that the landlord was not claiming. Of course the landlord can do that, and to think that a landlord "couldn't do that" is not a defence.

The *Residential Tenancy Act* also states that where a landlord fails to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations, the landlord's right to claim against the security deposit for damages is extinguished. A claim for cleaning is considered damage, and I find that the landlord's right to make a claim for damages against the security deposit is extinguished. Therefore, the landlord ought to have returned the entire security deposit to the tenant. Since the landlord did not, the tenant is entitled to double the amount, or \$850.00.

The landlord's right to make a claim for damages is not extinguished. I have reviewed all of the evidence, including the move-in condition inspection report. The tenant testified that the rental unit was not perfectly clean when the tenant moved in, but the report does not reflect that. The law states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

If a large kitchen appliance is on wheels, a tenant is expected to clean under and around it. The tenant's witness was asked whether or not they were on wheels, but he did not know. What is clear from the landlord's photographs is that the oven that had not been cleaned and baseboards and doors had not been wiped down, also the responsibility of the tenant. In the circumstances, I find that the landlord is entitled to the \$120.00 claim.

Since both parties have been successful, I decline to order that either party recover the filing fee from the other party.

Having found that the tenant is owed \$850.00 and the landlord is owed \$120.00, I set-off those amounts and I grant a monetary order in favour of the tenant for the difference of \$730.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$730.00.

This order is final and binding and may be enforced.

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: March 20, 2023

---

Residential Tenancy Branch