



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MNR, MND, MNDC, FF  
For the tenant: MNSD, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenant applied for a return of his security deposit, doubled, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, a monetary order and to recover the filing fee?

2. Is the tenant entitled to a return of his security deposit, doubled, and to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on August 1, 2011, monthly rent was \$1180 and the tenant paid a security deposit of \$590 at the beginning of the tenancy.

The landlord contended that the tenancy ended on March 10, 2012, and the tenant contended that the tenancy ended on or about February 22-23, as his new employment in another town began on February 27, 2012.

The parties agree that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Branch Regulations.

### *Landlord's application-*

The landlord's monetary claim is \$766.50, comprised of unpaid rent of \$110, travel costs of \$176.50, carpet cleaning of \$130 and cleaning the rental unit for \$350.

The evidence and confirmation of the tenant shows that the tenant agreed to allow the landlord to deduct \$110 for unpaid rent and \$130 for carpet cleaning from the tenant's security deposit.

The landlord agrees that she received the tenant's written forwarding address in early June, as her application was filed on June 13, 2012.

The landlord said the tenant left the rental unit dirty and unclean, which required the landlord and her spouse to expend a large amount of time in cleaning.

In addition, the landlord argued that she was entitled to travel costs due to the tenant's early lease break, as she lived out of town.

The landlord's relevant evidence included text messages between the parties and ferry expense receipts. The landlord confirmed that the carpet had not yet been cleaned as of the day of the hearing, although new tenants are currently in the rental unit.

The tenant responded, saying that he left the rental unit in an equal or better condition than when he received it, pointing to his witness statements provided.

The tenant said that he was aware the landlord lived out of town, and was cooperative in showing the rental unit to potential tenants.

*Tenant's application-*

The tenant's claim is for his security deposit of \$590, doubled, less the amount he agreed that the landlord could retain from his security deposit, prior to her filing an application, that being \$110 for unpaid rent and \$130 for carpet cleaning.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

*Landlord's application-*

I find the landlord submitted insufficient evidence that the tenant left the rental unit in a state which required cleaning.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

I therefore dismiss her claim of \$350 for cleaning, without leave to reapply.

As to the landlord's request for travel expenses, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be

responsible for the landlord choosing to rent a property in another town apart from where the landlord resides. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit. Therefore, I find that the landlord may not claim travel costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the landlord's claim of \$176.50 for travel, without leave to reapply.

Although I find the landlord has not submitted proof that the carpet required cleaning or that she has incurred a loss for such cleaning, I allow the landlord's claim for \$130 as the tenant had previously agreed that she may retain this amount.

As to the unpaid rent, I allow the landlord's of \$110, due to the tenant's confirmation that he owed such amount and having granted the landlord authority to deduct the amount from his security deposit.

I therefore find the landlord has established a total monetary claim of \$240.

I have not allowed the landlord recovery of her filing fee, as I find it was not necessary to claim for unpaid rent or carpet cleaning, due to the tenant's prior agreement, and as I have dismissed the remaining claims of the landlord.

#### *Tenant's application-*

Under the Act, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

In this case, the landlord filed an application for dispute resolution claiming against the tenant's security deposit for damage within 15 days after receiving the tenant's written forwarding address after the end of the tenancy. I note that the landlord's application also claimed for unpaid rent and carpet cleaning; however, it was not necessary to make that claim as the tenant had previously agreed in writing to allow the landlord to deduct these amounts from his security deposit well in advance of the application, approximately 2 months. I therefore proceeded only on the basis that the claim was for damage and travel costs to attend to damages.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenants' forwarding address in very early June 2012, but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's security deposit within 15 days of having received the tenant's written forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of his security deposit of \$590.

Due to his successful application, I also award the tenant recovery of his filing fee of \$50.

### Conclusion

The landlord has established a monetary claim of \$240.

The tenant has established a monetary claim of \$1230, comprised of his security deposit of \$590, doubled, and for recovery of the filing fee of \$50.00.

From the tenant's monetary claim, I have deducted the amount of the landlord's monetary claim of \$240, and find that the tenant is entitled to a monetary order in the amount of \$990.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$990, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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: August 24, 2012.

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Residential Tenancy Branch