# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Interlink (2008) Realty Corporation
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of double the $500.00 security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied to retain the sum of $160.00 from the security deposit, plus filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenant's 1 page letter dated June 20, 2014 that accompanied his application and hearing documents sent to the landlord in June 2014.

The tenant confirmed receipt of the landlord's application and hearing package within the required time-frame.

The tenant did not receive the landlord's evidence submission that was given to the Residential Tenancy Branch on June 26, 2014. The landlord said the tenant had previously been given some of the documents and that as far as she knew the tenant had been given all of the information.

As the landlord could not provide any information in relation to service of documents to the tenant; such as the date and method of service, I set aside the landlord's written submission. The landlord was at liberty to make oral submissions.

The tenant agreed to the referencing of the tenancy agreement contained in the landlord's evidence, as the tenant had a copy of that document before him.

The landlord did not provide a detailed calculation of the claim made. The landlord said that the claim represented $100.00 for carpet cleaning and $60.00 for suite cleaning.

Issue(s) to be Decided

Is the tenant entitled to return of double the $500.00 security deposit paid?

Is the landlord entitled to compensation in the sum of $60.00 for cleaning and $100.00 for carpet cleaning?

May the landlord deduct costs from the security deposit?

Background and Evidence

The tenancy commenced on June 1, 2013; it was a 1 year fixed term. Rent was $1,000.00 per month, due on the 1st day of each month. A security deposit in the sum of $500.00 was paid.

The addendum to the tenancy agreement required the tenant to allow a $95.00 minimum deduction from the deposit, for carpet cleaning.

A move-in condition inspection report was completed; the tenant did not receive a copy of the report.

The tenancy ended on May 31, 2014. A move-out condition inspection report was completed. The parties agreed that the tenant signed that report, prohibiting any deduction from the security deposit. The tenant's forwarding address was provided on the report. On June 12, 2014 the landlord submitted a claim against the deposit.

The landlord said that the unit looked clean at the end of the tenancy but when they wiped surfaces down they were not clean. The carpets did not look dirty but the landlord expects the carpets to be cleaned at the end of any tenancy lasting more than 1 year. The landlord does not allow a tenant to clean the carpets; the landlord uses their own company. The landlord said the unit did not look visibly dirty.

The tenant said that he left the unit cleaner than it was at the start of the tenancy; he cleaned the 550 sq. foot unit for 4 hours. He was told that the new occupant was extremely fastidious and that the cleaning would need to be completed to a high standard. The tenant said he even used tweezers to pick small flecks from the carpeting. The tenant did not think that any amount of cleaning would satisfy the landlord.

The tenant's June 20, 2014 letter to the landlord explained that the landlord had extinguished the right to claim against the security deposit as the landlord had not provided the tenant with copies of the inspection reports.

The landlord said that someone in the office would have sent the tenant copies of the condition inspection reports and that they were in the evidence given to the Residential Tenancy Branch. The landlord did not have any information on service of the reports to the tenant.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections.

The landlord did not supply copies of the condition inspection reports that had been completed, as evidence for this hearing; as the evidence was set aside due to a failure to serve the tenant. There was no evidence before me confirming the tenant had been given copies of the condition inspection reports, as required by section 23( 5) of the Act and section 18 of the Regulation. The landlord had no knowledge of service of either of the reports. Therefore, I find, on the balance of probabilities that the landlord did not provide the tenant with copies of the condition inspection reports at the start or the end of the tenancy.

When a landlord does not provide a tenant with a copy of the condition inspection report, Section 36 of the Act determines that the landlord then extinguishes the right to claim against the security deposit for damage to the rental unit. Therefore, I find that the landlord did extinguish the right to claim against the deposit.

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

> ***36*** *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> *(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and*
>
> *(b) the tenant has not participated on either occasion.*
>
> *(2) Unless the tenant has abandoned the rental unit,* ***the right of the 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 35 (2) [2 opportunities for inspection],*
>
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
>
> ***(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.***

(Emphasis added)I have applied section 38 of the Act which determines that when the right to claim against the deposit has been extinguished, the landlord must return the deposit within fifteen days of the end of the tenancy or the date the written address was received; whichever is later. There was no dispute that the forwarding address was given to the landlord on May 31, 2014, when the tenancy ended. There was no dispute that the landlord has not returned the deposit.

Therefore, as the landlord extinguished the right to claim against the security deposit and failed to return the deposit within fifteen days of May 31, 2014, I find that the tenant is entitled to return of double the $500.00 security deposit.

Section 37 of the Act requires a tenant to leave a rental unit reasonably clean. The landlord may have felt compelled to wipe surfaces down but also said that the unit was not visibly dirty. Therefore, based on the testimony of the landlord I find that the tenant did leave the unit in a reasonably clean state at the end of the tenancy and that the claim for suite cleaning and carpet is dismissed.

In relation to the term contained in the landlord's addendum which requires an automatic deduction from the security deposit for carpet cleaning; Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As the term is inconsistent with the Act, it is unenforceable. The only time a tenant may agree to deductions from a deposit is in writing, at the end of a tenancy. Further, the term, as written, is a breach of the tenant's right and obligation to clean the rental unit.

As the tenant's application has merit I find that the tenant is entitled to recover the $50.00 filing fee from the landlord.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,050.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's claim is dismissed.

The tenant is entitled to return of double the $500.00 security deposit and filing fee costs.

This decision is final and binding and 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: October 15, 2014

Residential Tenancy Branch