



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 35 minutes. The landlord's agent LJ ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property supervisor for the landlord company named in this application and that she had authority to represent it as an agent at this hearing. "Witness MS" testified on behalf of the landlord at this hearing and the landlord had an opportunity to ask him questions.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on June 8, 2016, by way of registered mail to a written forwarding address provided by the tenant. The landlord provided a copy of this forwarding address from the tenant's handwritten letter, dated May 5, 2016. The landlord provided a Canada Post tracking number verbally during the hearing, to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 13, 2016, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and witness MS, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2014 and ended on May 31, 2016. Monthly rent in the current amount of \$1,281.00 was payable on the first day of each month and an additional \$20.00 was due for parking each month. The written tenancy agreement states that the rent was originally \$1,250.00 per month but the landlord said that legal notices of rent increase were issued to the tenant to raise the rent to \$1,281.00. The landlord claimed that the tenant signed the move-out condition inspection report agreeing that May 2016 rent was \$1,301.00 including \$20.00 for parking and the landlord also provided a tenant ledger for the above amounts. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing.

Move-in and move-out condition inspection reports were completed for this tenancy. The landlord said that she had written permission from the tenant to retain \$1,301.00 for May 2016 rent and parking, \$125.00 for carpet cleaning and \$300.00 to replace the damaged stairway carpet, from the security deposit. The landlord stated that a written forwarding address was provided by the tenant on May 5, 2016 by way of a letter. The landlord filed its application on June 8, 2016.

The landlord seeks a monetary order of \$3,027.00 plus the \$100.00 filing fee.

## Analysis

### Rental Loss

Section 45 of the *Act* requires a tenant to provide one month's written notice to the landlord to end a tenancy. The notice must be given on the day before the day in the month when rent is due. As per the written tenancy agreement, rent was due on first day of each month. The landlord testified that the tenant gave written notice on May 5, 2016 to leave on May 31, 2015. The tenant's notice was due by April 30, 2016 and was therefore, five days late.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I accept the landlord's evidence that she did not advertise this unit for rental because she called potential tenants from a waiting list and found the new tenant using that method. She said that the new tenant moved in on July 1, 2016 because that person had to provide one month's notice to leave the person's unit and because carpet cleaning and replacement had to be done in the rental unit.

Accordingly, I find that the landlord is entitled to unpaid rent for May 2016 in the amount of \$1,281.00 as well as \$20.00 for parking. The tenant agreed to pay this amount in the move-out condition inspection report by initialling next to this claimed amount. The tenant occupied the rental unit from May 1 to 31, 2016 and owes rent as per section 26 of the *Act*.

I dismiss the landlord's claim for rent and parking of \$1,301.00 for June 2016. The tenant did not initial this claimed amount in the move-out condition inspection report, even though she did so for May 2016. The landlord corrected the report after it was signed by changing April 2016 rent to June 2016. The landlord did not provide invoices or receipts to state when the rental unit carpet cleaning and replacement were done or how long it took. The landlord had from May 5 to May 31, 2016 in order to call prospective tenants from the waiting list. The landlord did not provide documentary evidence of the tenancy agreement with the new tenant. I find that the landlord failed to fully mitigate its losses.

### Other Losses

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$125.00 for carpet cleaning at the rental unit. The landlord and witness MS both confirmed that the carpet was stained with cat urine that could not be removed and caused a strong odor. They said that they attempted to have the carpet professionally cleaned but were unsuccessful so they ultimately had to replace the carpet. The tenant agreed to pay this amount in a signed agreement, dated May 16, 2016, which the landlord provided. The landlord said that the actual cost was \$180.00 to clean and deodorize the carpet but they only included an estimate in the move-out condition inspection report so this was the only amount being sought.

I award the landlord \$300.00 to replace the stairway carpet at the rental unit. The landlord and witness MS both confirmed that the carpet was heavily scratched and stained with cat urine. The tenant agreed to pay this amount in the signed move-out condition inspection report, dated June 1, 2016. The landlord said that the actual cost was \$500.00 to replace the carpet but they only included an estimate in the move-out condition inspection report so this was the only amount being sought.

As the landlord was mainly successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$625.00. During the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$625.00 in partial satisfaction of the monetary award.

### Conclusion

I order the landlord to retain the tenant's entire security deposit of \$625.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,201.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: December 06, 2016

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Residential Tenancy Branch