



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lexus Properties (Huntington Court)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, FF

### 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 *Act*, regulation or tenancy agreement; for 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on its first day and was adjourned for a continuation of testimony.

The tenant and an agent for the landlord company attended the conference call hearing on both days, and each gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The landlord's agent called 2 witnesses, and the tenant called one witness. The parties were given an opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### 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 *Act*, regulation or tenancy agreement?

- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?
- Has the tenant demonstrated a claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The parties agree that this fixed term tenancy began on July 1, 2012 and was to expire on June 30, 2013, however the tenant vacated the rental unit on October 31, 2012. Rent in the amount of \$760.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On May 31, 2012 the landlord collected a security deposit from the tenant in the amount of \$380.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent testified that the tenant breached the terms of the lease by giving a notice to end tenancy prior to the expiry date of the fixed term. A copy of the tenancy agreement was provided for this hearing. The tenancy agreement contains a liquidated damages claim as follows:

"5. LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$350.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property."

The landlord's agent testified that on October 1, 2012 the tenant gave notice to vacate the rental unit effective October 31, 2012. The landlord claims liquidated damages in the amount of \$350.00, and has provided a copy of the tenant's notice.

The landlord's agent further testified that the rental unit was advertised for rent commencing the date the tenant provided the notice to vacate. The advertisements were placed on Kijiji, Craigslist and another free on-line advertising web site, but the rental unit was not re-rented. The landlord then placed advertisements in the

Vancouver Sun and The Province and provided invoices from the newspapers as evidence of having advertised. One advertising invoice shows an invoice date of October 3, 2012 for a cost of \$41.95. Another invoice shows that the advertisements would run from October 5 to 7, 2012 for a cost of \$104.16. Other documents have been provided showing that the rental unit was advertised again on Craigslist and Kijiji and those advertisements provide for a \$200.00 move-in bonus. Another invoice for the newspaper advertisements has been provided for advertisements to run from October 19 to 21, 2012 for another cost of \$104.16, and another invoice for October 26 to 28, 2012 for another \$104.16. The landlord's agent testified that the rental unit was re-rented for November 1, 2012 with the \$200.00 move-in bonus, which the landlord claims as against the tenant as a cost to re-rent the rental unit. A copy of the tenancy agreement for the new tenant has been provided, which states that the move-in bonus is \$200.00.

The landlord's agent also testified that the tenant did not have the carpet cleaned at the end of the tenancy and pointed out a paragraph in the Addendum to the tenancy agreement which states as follows:

“10. A carpet cleaning charge and/or carpet deodorizing charge will be charged to the tenant at the end of the tenancy (to be deducted from the damage deposit).”

The landlord has provided an invoice for carpet cleaning in the amount of \$72.80, however the landlord claims \$100.00 for this service and testified that the difference is an “administrative cost.”

The landlord's agent further testified that the tenant was told that the landlord would try to re-rent the rental unit on-line and if successful, the liquidated damages would not be charged, and if not re-rented, the tenant would have to pay advertising costs in excess of \$400.00.

The landlord's agent further testified that on October 21, 2012 the tenant provided a letter to the landlord attached to an email, and provided a copy of both documents for this hearing. The letter attached to the email contains a forwarding address of the tenant and requests return of the security deposit.

The landlord's agent also testified that the tenant's claim states that the tenant was forced to move out of the rental unit. The landlord's agent disagrees that the tenant was forced out and stated that the tenant should not be entitled to moving costs as claimed.

The landlord claims \$700.00, being \$350.00 in liquidated damages, \$100.00 for carpet cleaning and administrative costs associated with carpet cleaning, recovery of the \$200.00 bonus paid to the new tenant, as well as \$50.00 for recovery of the filing fee for the cost of this application.

The landlord's first witness testified to being an administrative assistant for the landlord company, and has held that position for about 5 years. The witness testified that the tenant moved out of the rental unit on October 31, 2012 and move-in and move-out condition inspection reports were completed. Copies of the reports were provided for this hearing, and the landlord's witness testified that the tenant was present when the reports were completed and received a copy. The reports show that at move-in and at move-out, the carpets/floors in all rooms were satisfactory, with the exception of a frayed edge on the bathroom floor, which did not change from move-in to move-out. The report also shows a "Security Deposit Statement" wherein the landlord claims \$100.00 for carpet cleaning, \$350.00 for liquidated damages and \$200.00 for a move-in bonus to a new tenant. The tenant has signed saying that the tenant does not agree that the move-out condition inspection report fairly represents the condition of the rental unit.

The landlord's second witness testified to being the building manager of the apartment complex and has been for about 2 ½ years. The witness stated that after the tenancy began but before the tenant actually moved into the rental unit, another rental unit had moisture through the wall. The witness entered into the tenant's rental unit to complete emergency repairs. The tenant was not yet there, had no physical possession of the rental unit because the tenant did not yet have keys to the rental unit.

The witness also testified that during the tenancy the tenant complained about a mouse in the rental unit. A pest control person was called out, and no signs of a mouse were found but traps were left. No one, other than the tenant, ever saw a mouse and no mice were caught in the traps.

The witness also testified that the rental unit was shown to perspective renters while the tenant was still resident there. There were no complaints about showing the rental unit, and the tenant was cooperative.

Also, during the tenancy, the tenant had complained about noise from a rental unit above. The witness sent a note to that tenant, but the tenant again complained about

noise. The witness gave the tenant in the upper unit a caution notice and no further complaints were received. The new tenant in the rental unit has not made any complaints about noise either.

The witness also testified that during the tenancy the tenant complained about cigarette smoke in the bathroom from the fan. The complaint didn't make sense because the fan blows in a different direction and would not allow smoke to emanate back into the bathroom of the rental unit. No one else has ever said anything about smoke.

The witness also testified that there were no soiled marks on the carpets at the end of the tenancy, but the landlord company always cleans the carpets at the end of a tenancy. Further, if there was a rodent in the apartment, it would be necessary to have the carpets cleaned.

The tenant's witness testified out of order, and before the tenant testified, in order to excuse the witness. The witness testified to visiting the tenant multiple times and only lives about a block away. The witness heard clear sounds of someone dropping something heavy on the floor above the rental unit and very loud music to the point of normal speaking being disrupted.

The witness also testified that the tenant had called the witness at midnight very concerned and frantic about seeing a mouse in the rental unit. The two spent over an hour looking for it, and the next day the tenant was still agitated. The mouse was spotted again eventually, and the tenant resided with the witness for a weekend as a result. The witness did not see the mouse or any mouse droppings.

The witness also testified to completing a letter which has been signed by the witness and provided for this hearing. The letter states that the witness personally witnessed damage to the bathroom, which was not noted when the witness viewed the rental unit for the tenant prior to the commencement of the tenancy. The toilet was continuously running and poor water flow from the bathroom faucet was evident in September, 2012. Also, cigarette smoke was detected when the bathroom fan was turned on, and loud music and heavy falling objects were heard from the neighbour above at various times throughout the tenancy. Also, from October to the end of the tenancy, a rodent was heard in the shared walls of the rental unit, and the tenant had to leave all lights on in the rental unit to deter the mouse.

The tenant testified that the landlord's agents were notified of issues that affected the tenancy, such as noise from neighbours, spotting a rodent in the rental unit, repair work required in the bathroom, and the fact that the rental unit was entered by the landlord without notice to the tenant prior to the tenant moving any belongings into the rental unit. One of the landlord's agents offered to end the tenancy early, but the tenant hadn't asked for that and it wasn't convenient. The tenant was trying to avoid moving, but it was difficult to get any response from the landlord company.

The tenant spoke to 2 agents of the landlord after moving in on August 8, 2012 about noise issues.

The tenant has provided a copy of a letter that the landlord sent to the tenant dated September 27, 2012 which is a response to the tenant's concerns sent to the landlord by email on September 17, 2012. Those concerns include lack of a sound barrier, cigarette smoke, lack of privacy from a neighbour, and entry to the rental unit without notice. The letter states that the building is a wood frame and is not soundproof, and the residents in the suite above had been given warning about noise concerns. The letter denies that cigarette smoke could enter through the ventilation system, and states that the tenant did not have the keys for the apartment yet when the entry took place and entry was for the purpose of making repairs in the bathroom. The letter also explains that the landlord would be agreeable to ending the tenancy early if the tenant agreed to be responsible for advertising, damages, carpet cleaning, and the tenant would permit showings. The tenant would also be required to provide a signed notice to end the tenancy a minimum of one full month prior to moving out and states that the tenancy must end on the last day of the month. A standard Notice to End Residential Tenancy is attached to the letter for the tenant to sign and return. Another letter dated September 28, 2012 has also been provided, wherein the landlord's agent again explains that the tenant could end the tenancy early by paying advertising costs instead of liquidated damages, and that the notice to end the tenancy must be received by the landlord by the last day of the month.

The tenant provided the notice to end the tenancy on October 1, 2012. The tenant stated that another agent of the landlord had agreed that the tenant could give notice to vacate on October 1, 2012. The tenant did not agree to the terms set out in the landlord's letter and contacted the landlord's agents to find out what the advertising costs would be. The tenant stated that the landlord did not provide advertising costs to the tenant, and had waived the liquidated damages.

The tenant claims double the amount of the security deposit, or \$760.00 in addition to moving costs in the amount of \$415.80, although no evidence of moving costs has been

provided. The tenant stated that the landlord forced the tenant to move by refusing or neglecting to deal with the issues.

### Analysis

Firstly, with respect to the landlord's claims, the landlord has provided an invoice for carpet cleaning in the amount of \$72.80, however the landlord claims \$100.00 for this service and testified that the difference is an "administrative cost." The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I also refer to the Residential Tenancy Branch Policy Guidelines that state carpet cleaning can be a tenant's responsibility at the end of a tenancy if the tenant has resided in the rental unit for over a year or has pets that are not kept in a cage. In order to determine whether or not a tenant has left a rental unit reasonably clean, the regulations state that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the reports show that the floors are in no different condition at the end of the tenancy than they were at the beginning. Further, the tenant resided there for less than a year, and if there were any animals in the rental unit, they were the responsibility of the landlord to remove. A tenant is not required to leave a rental unit in the pristine condition that a landlord may want at the end of a tenancy for perspective tenants; that is a landlord's responsibility. I further find that the clause in the tenancy agreement that requires a tenant to clean the carpets is unconscionable in that it has no benefit for the tenant and is contrary to the *Act*, and the landlord's claim for carpet cleaning and administrative costs associated with carpet cleaning is hereby dismissed.

With respect to the landlord's claim for recovery of the \$200.00 bonus paid to the new tenant, I find that the landlord has provided evidence of having offered the bonus to a new tenant who re-rented the rental unit effective November 1, 2012. The landlord has also claimed liquidated damages and the tenancy agreement specifically states that the liquidated damages clause is not a penalty but a genuine pre-estimate of the costs associated with re-renting the rental unit. The landlord did not lose any rent – the tenant moved out at the end of October, 2012 and a new tenant moved in November 1, 2012. The tenant's position is that the landlord waived the liquidated damages clause, but I find that the landlord was prepared to do that if the tenant agreed to pay the advertising costs, and the tenant did not agree.

I further find that the bonus paid to the new tenant is included in the liquidated damages clause, and the landlord is entitled to one, but not both. The parties entered into a tenancy agreement which included the liquidated damages clause and the tenant did

not agree to the conditions required to remove the liquidated damages clause. Therefore, I find that the landlord is entitled to liquidated damages in the amount of \$350.00.

The tenant also claims that the tenant was forced from the rental unit due to conditions that the landlord failed to correct. I find no evidence of that. The landlord attempted to eradicate a rodent, but none was found. The landlord also warned other tenants of noise and disturbances. With respect to the landlord's agents entering the rental unit without prior notice to the tenant, the parties agree that tenant was not yet there, had no physical possession of the rental unit because the tenant did not yet have keys to the rental unit. Therefore, I find that the tenant has not been inconvenienced nor suffered any loss as a result.

Having found that the tenant has not proven that the tenant was forced from the rental unit, the tenant is not entitled to recovery of any moving costs.

With respect to the tenant's application for double recovery of the security deposit, the landlord's agent testified that the tenant provided a forwarding address in writing when the move-out condition inspection report was completed on October 31, 2012, which was also the date that the tenancy ended. If a landlord fails to return a security deposit in full or apply for dispute resolution claiming against the security deposit 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, the landlord must be ordered to repay the tenant double the amount of the security deposit. The tenancy ended on October 31, 2012 and the landlord's application for dispute resolution was filed on November 15, 2012, which is 15 days after the landlord received the tenant's forwarding address in writing. The tenant is therefore not entitled to double recovery of the security deposit.

In summary, I find that the landlord's application for a new tenant bonus and carpet cleaning with administrative costs have not been established and both are hereby dismissed. The landlord's application for liquidated damages is hereby allowed at \$350.00. The tenant's application for return of the security deposit is hereby allowed at \$380.00. The tenant's application for a monetary order for moving expenses is hereby dismissed.

The landlord currently holds the security deposit, and I order the landlord to return the balance to the tenant. Since both parties have been partially successful with the applications before me, I decline to order that either party recover the filing fee from the other.



Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$30.00.

This order is final and binding on the parties 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: April 08, 2013

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Residential Tenancy Branch

