



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, MNR, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, for alleged damage to the rental unit, for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with the application for dispute resolution and notice of hearing by Canada Post express post mail on or about December 16, 2015. The landlord supplied copies of the envelopes containing the tenant's copy of their application and the tracking number of the package mail. The landlord submitted further that he used the forwarding address provided by the tenant.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act as I accept that the express post mail does provide tracking information similar to registered mail. The hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement showing that this tenancy began on June 1, 2014, for a fixed term through May 31, 2015, that monthly rent was \$1475.00, and that the tenant paid a security deposit of \$757.50. The landlord submitted that the tenant vacated the rental unit on December 1, 2014.

The landlord's monetary claim is \$1513.63, comprised of "rent owing" of \$50.00, \$666.13 for loss of rent revenue from December 1-14, 2014, a "lease cost" of \$737.50, and carpet cleaning of \$60.00.

The landlord's relevant documentary evidence included, but was not limited to, a move-in and move-out condition inspection report, a letter from the tenant providing her written forwarding address, other communication between the parties, and the tenant's notice that she was vacating, dated November 5, 2014.

As to the landlord's claim for rent owing of \$50.00, the landlord submitted that this was for fees for late payments of rent.

As to the landlord's claim for loss of rent revenue from December 1-14, 2014, the landlord submitted that the tenant provided notice on November 5, 2014, that she was vacating at the end of November 2014. The landlord submitted further that they made immediate attempts to re-rent the rental unit, but were not successful until December 15, 2014.

As to the lease cost, the landlord explained that this was a term the tenant agreed to by signing the written tenancy agreement, in the event that she ended the fixed term earlier than May 31, 2015. It is noted that the term referred to by the landlord shows that the payment of \$737.50 was for liquidated damages and was not a penalty.

As to the claim for carpet cleaning, the landlord submitted that the tenant failed to clean the carpet prior to vacating, that it was mentioned on the move-out condition inspection report, and that the tenant agreed to carpet cleaning in the written tenancy agreement.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

#### *Rent owing-*

I find that the landlord's application did not fully explain this claim and was therefore unclear. For instance, when hearing from the landlord, the claim is not actually for rent, but for late fees. I therefore find it procedurally unfair to the respondent and would not have put her on notice that this claim was for late fees and not unpaid rent. The landlord's claim for "rent owing" for \$50.00 is dismissed.

#### *Loss of rent revenue from December 1-14, 2014-*

Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, May 31, 2015, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlord submitted sufficient, undisputed evidence that they took reasonable steps to mitigate their loss of unpaid rent and were able to secure a new tenant by December 15, 2014.

I therefore grant the landlord's claim for \$666.13.

#### *Lease cost (liquidated damages) -*

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible.

In the case before me, in examination of the written tenancy agreement, I find the contract does not clearly set out that the liquidated damages to be charged were a genuine pre-estimate of loss as that language is absent. Additionally, the landlord has not claimed that the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit nor have they provided any explanation as to how this sum is a pre-estimate of a loss.

I therefore find that the landlord has not supported their claim that they are entitled to liquidated damages and that claim is dismissed.

*Carpet cleaning-*

I accept the landlord's undisputed evidence that the carpet required cleaning after the tenancy ended and that the tenant contracted for this obligation.

I therefore grant the landlord's claim for \$60.00.

I grant the landlord recovery of their filing fee of \$50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$776.13, comprised of loss of rent revenue for \$666.13, \$60.00 for carpet cleaning, and \$50.00 for recovery of the filing fee paid for this application.

At the landlord's request, I direct them to retain the tenant's security deposit of \$737.50 in partial satisfaction of their monetary award of \$776.13 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$38.63, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be served to the tenant and may be filed in the Provincial Court of British Columbia (Small

Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord's application for monetary compensation is granted in part as they have been granted a monetary award of \$776.13, and directed them to retain the tenant's security deposit in partial satisfaction.

The landlord is granted a monetary order for the balance due.

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: July 22, 2015

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Residential Tenancy Branch

