



# Dispute Resolution Services

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      38, 67, 72

### Introduction

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

- a monetary order for unpaid rent and damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:16 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to her application. She testified that she sent her Application for Dispute Resolution with the Notice of Hearing and documentary evidence to the tenant by registered mail on February 4, 2015. She submitted a Canada Post receipt and tracking number with respect to this mailing. Pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution on February 9, 2015.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage? Is the landlord entitled to retain the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this tenancy began on August 1, 2007 on a month to month basis. The landlord continues to hold a security deposit in the amount of \$407.50 paid at the start of the tenancy. She testified that the tenant vacated the rental unit on January 15, 2015 after providing written notice on December 22, 2014. She testified that the tenant did not attend the move-out condition inspection but that she spoke to the tenant after the inspection was completed and asked her to come and review the condition inspection report. The landlord testified that the tenant did attend to the landlord's offices, review the condition inspection report and sign it. She provided a copy of the move-in and move-out condition inspection reports. At the end of the report, in the portion marked move-out, it reads "I agree to have the following charges deducted from the security deposit and/or pet damage deposit". The following deduction items and amounts are listed;

- 2<sup>nd</sup> set keys ...;
- Blue bedroom 2 coats paint (\$100.00);
- Front door closure (\$50.00);
- Replace bathroom door (\$100.00);
- Rent for January 2015 (\$505.00).

The landlord testified that there was damage left in the rental unit at the end of the tenancy. The landlord provided three photographs; 1 of a dark blue painted bedroom; 1 of a hole in a wood door; and 1 of a door with smaller holes. She testified that the dark blue bedroom required three coats of paint. She testified that the painting was done by the building manager. She testified that the hole in the door to the bathroom was discovered at the end of the tenancy. She testified that the building manager repaired the hole. She testified that the main entrance door to the rental unit required a new pneumatic lever to ensure the door closes quietly and that the pictures of the door with the smaller holes represent where the pneumatic lever should usually be. She testified that the tenant would have been provided with a listing of standard costs for these types of items. However, no such list was submitted for the hearing. The landlord sought to recover \$755.00. She sought to retain the security deposit towards that amount and receive a monetary award for the balance.

The landlord testified that it was difficult to re-rent the tenant's rental unit over the winter holidays. She testified that the tenant's notice of intent to vacate was not actually received by the landlord company until December 29, 2014 because of office closures. She testified that the unit was shown to some interested tenants and that notices were placed in both the paper and online advertisements but the landlord was unable to re-rent the unit until February 15, 2015. She sought to recover the unpaid rent for the month of January 2015. The landlord submits she incurred loss as a result of the tenant

failing to pay any amount in January 2015, vacating mid-month and vacating less than three weeks after providing notice.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Even when making a claim against a security deposit, the claimant must meet this test to establish monetary loss as a result of the tenancy.

In this case, the landlord has provided testimony, documentary and photographic evidence that there was damage or a need to repair within the rental unit at the end of the tenancy. The landlord also submitted a condition inspection report properly completed and signed by the tenant, agreeing to allow the landlord to retain the security deposit towards the noted damage. The landlord provided sworn, undisputed testimony of the cost of the work by the building manager and the costs of any purchases. These amounts are also listed clearly on the list providing deduction for damage by the tenant.

- Blue bedroom 2 coats paint (\$100.00);
- Front door closure (\$50.00); and
- Replace bathroom door (\$100.00).

Given the landlord's clear and undisputed evidence, I find the landlord is entitled to recover the costs of repairs and repainting in the rental unit totaling \$250.00.

I find that the landlord is entitled to receive a monetary order for unpaid rent in January 2015. The landlord submitted that the notice of the tenant was insufficient. She testified that the tenant provided notice three weeks prior to her move-out date and not one month, as required by the tenancy agreement and the *Act*. The tenancy was established on a month to month basis. In accordance with the *Act*, the tenant should have provided notice "the day before rent is due in a given month" (as stated in the tenancy agreement).

The undisputed testimony of the landlord is that the tenant vacated the rental unit January 15, 2015 but did not pay any rent for the month of January 2015. The unit was re-rented on the February 15, 2015. I find the landlord has shown on a balance of

probabilities that the tenant is responsible both for the portion of January that she continued to reside in the unit as well as the portion of January that she did not provide sufficient notice for. The tenant is required to pay rent for the month of January 2015 in the amount of \$505.00 in all of the circumstances.

I note that I am providing the landlord with the actual amount of the tenant's rent instead of the market amount estimated.

The landlord testified that she continues to hold a security deposit of \$407.50 plus interest from August 1, 2007 to the date of this decision for this tenancy (totalling \$8.71). I will allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in favour of the landlord as follows;

Re-painting blue bedroom	\$100.00
Repairing pneumatic lever	50.00
Repairing hole in door	100.00
Loss of January 2015 rent (unpaid)	505.00
Less Security Deposit and Interest (\$407.50 plus \$8.71 interest)	-416.21
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$388.79</b>

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 17, 2015

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Residential Tenancy Branch