



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VEYRON PROPERTIES GROUP LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and utilities; damage to the rental unit; damage or loss under the Act, Regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord's agent testified that he personally delivered the hearing package to the tenant's roommate at her place of residence on August 18, 2015 and that the roommate assured the landlord that he would give the documents to the tenant. The landlord subsequently had a telephone conversation with the tenant approximately a week later and the tenant acknowledged to him that she had received the landlord's hearing documents. Although the landlord did not serve the tenant in one of the ways required under section 89(1) of the Act, I was reasonably satisfied the tenant was in receipt of the hearing documents based upon the landlord's affirmed testimony and I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act. Therefore, the hearing proceeded without the tenant present.

### Issue(s) to be Decided

1. Is the landlord entitled to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy started September 1, 2014 for a fixed term set to expire August 31, 2015. The tenant paid a security deposit of \$475.00 and was required to pay rent of \$950.00 on the first day of every month. The tenancy agreement provides for payment of late fees of \$25.00 each and \$25.00 for NSF cheques.

The tenant's rent payment for July 2015 was returned for insufficient funds and the landlord received a notice from the tenant on July 2, 2015 that she intended to end the

tenancy effective July 31, 2015. The landlord submitted that the tenant vacated the unit on July 27, 2015. The landlord testified that advertising the unit for rent commenced right away but that the unit did not show well and the unit was not re-rented until September 1, 2015.

The landlord seeks to recover the following amounts from the tenant:

1. Unpaid rent and loss of rent for the months of July 2015 and August 2015 in the sum of \$1,900.00 due to the tenant's failure to pay rent and fulfill her terms of tenancy.
2. Carpet cleaning costs of \$225.57 because the carpet was left filthy and stained.
3. Cleaning costs of \$250.00 because the rental unit was left filthy.
4. Painting costs of \$308.00 because the unit was in very good condition at the start of the tenancy and at the end of the tenancy several walls were damaged. The entire unit was re-painted but the landlord limited its claim against the tenant to the costs associated to the more heavily damaged walls.
5. Hydro in the estimated amount of \$100.00 for the months of July and August 2015.
6. NSF fees for the months of April 2015, July 2015 and August 2015. The landlord originally claimed \$105.00; however, when I questioned the landlord's calculation the landlord limited the claim to that permitted under the tenancy agreement.

I noted that the tenancy agreement provides for a liquidated damages clause and there was a document signed by the tenant acknowledging the requirement to pay this amount as an "administrative fee". I determined that the landlord was not claiming liquidated damages or an "administrative fee" but was claiming for loss of rent for August 2015. The landlord's agent confirmed that out of fairness to the tenant the landlord was only seeking one or the other but not both.

Documentary evidence provided by the landlord included a copy of the tenancy agreement; the tenant's notice to end tenancy; bank reports showing the return of April 2015 and July 2015 rent payments; a 10 Day Notice to End Tenancy for Unpaid Rent issued in April 2015; the condition inspection report; written confirmation from the tenant that she owes rent for July 2015 and an administrative fee of \$950.00 for August 2015 and NSF fees; and, receipts for carpet cleaning, cleaning, and painting.

### Analysis

Based upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Section 26 of the Act requires that a tenant pay rent when due under the terms of their tenancy agreement. Upon review of the fixed term tenancy agreement, I find the tenant had an obligation to pay rent in the amount of \$950.00 per month for the months of July and August 2015 yet the evidence shows that she failed to do so. I also accept that upon receiving the tenant's notice to end tenancy the landlord made reasonable attempts to mitigate losses by advertising and showing the unit. Therefore, I find the landlord is entitled to recover unpaid and/or loss of rent from the tenant for the months of July 2015 and August 2015 in the sum of \$1,900.00, as claimed.

Section 37 of the Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. Based upon the undisputed evidence before me, I accept that the tenant failed to meet this obligation and I find the landlord has sufficiently proven the landlords losses that resulted from the tenant's violation of the Act. Therefore, I grant the landlord's request to recover the costs for carpet cleaning, cleaning and painting, in the amounts claimed.

The tenancy agreement provides that the tenant may be charged \$25.00 for late payment of rent and \$25.00 for returned cheques. I am satisfied that this clause complies with section 7 of the Residential Tenancy Regulations and I find the landlord entitled to recover late fees and NSF fees for the months of April and July 2015. I do not award late or NSF fees for August 2015 since the tenancy agreement had come to an end in July 2015 when the tenant vacated the rental unit. Since the payments for April and July 2015 were both returned and late the landlord is entitled to charge both fees for each of these two months which totals \$100.00. Therefore, I award the landlord \$100.00 for NSF and late fees.

As to the landlords claim for hydro against the tenant I note that the tenancy agreement provides that the tenant is required to pay for electricity and is to contact BC Hydro to arrange for service. Considering the tenant was residing in the unit in July 2015, presumably under her own hydro account, and that I was not provided any documentary evidence from the landlord show when or if hydro was transferred into the landlord's name and the amount paid by the landlord for the remainder of the term, I find the landlord has not sufficient proven this portion of the claim. Therefore, I deny this portion of the landlord's claim.

Given the landlord was largely successful in this application I further award the landlord recovery of the \$50.00 filing fee paid for this Application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant calculated as follows:

Unpaid and/or Loss of Rent: July and August 2015	\$1,900.00
Carpet cleaning	225.57
Cleaning	250.00
Wall repairs and painting	308.00
NSF and late fees	100.00
Filing fee	50.00
Less: security deposit	<u>(475.00)</u>
Monetary Order	\$2,358.57

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,358.57 to serve and enforce upon the tenant.

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: March 11, 2016

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Residential Tenancy Branch