



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, O, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on October 14, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on April 01, 2016 for a fixed term tenancy that was due to end on March 31, 2017. Rent for this unit was \$768.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$384.00 on March 30, 2016. The tenancy ended on September 27, 2016 and the rent was paid until the end of September, 2016. The tenant provided a forwarding address by email to the landlord on September 29, 2016. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant ended the tenancy before the end of the fixed term. In the tenancy agreement under clause 3.1 titled Liquidated Damages, the landlord notified the tenant by way of this clause that an amount of \$384.00 will be charged to the tenant if they ended the tenancy before the legal end date. This is a genuine pre-estimate of the landlord's administrative costs of advertising and re-renting the unit as a result of an early termination. This is claimed as liquidated damages and not as a penalty.

The landlord testified that the tenant failed to leave the unit reasonably clean at the end of the tenancy and failed to clean the carpets which were left stained and dirty. The landlord referred to the invoice provided in documentary evidence that shows the

carpets had been cleaned just before the tenant moved in the unit. The landlord had the unit cleaned at a cost of \$90.00 and the carpets cleaned at a cost of \$189.00. The landlord seeks to recover these amounts from the tenant. The landlord has provided invoices for the cleaning and carpet cleaning in documentary evidence and a copy of the move in and move out inspection reports which have been signed by both parties.

There is no further monetary claim for unpaid rent.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for liquidated damages; liquidated damages may be claimed where there is a clause in the tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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.

I have considered the wording of the tenancy agreement concerning liquidated damages and find this is a genuine pre-estimate and is not an extravagant sum that would constitute a penalty. The tenant was aware by signing the tenancy agreement that he could not legally end the tenancy until March 31, 2017 and that the landlord would impose a charge for liquidated damages if the tenant did so. The tenant ended the tenancy on September 27, 2016 and therefore I find in favour of the landlord's application to recover the amount of **\$384.00**.

With regard to the landlord's application to recover \$90.00 for cleaning; s. 32(2) of the *Act* states: A tenant must maintain reasonable health, cleanliness and sanitary

standards throughout the rental unit and the other residential property to which the tenant has access. I am satisfied from the undisputed evidence before me in the form of the inspection reports and invoices for cleaning, that the tenant failed to leave the rental unit reasonably clean. I therefore find in favor of the landlord's application to recover **\$90.00** for cleaning.

With regard to the landlord's application to recover \$189.00 for carpet cleaning; I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance on the landlords and tenants responsibilities during the tenancy. This also has guidance concerning carpet cleaning and states; in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Having considered the evidence before me I am satisfied that the carpets in all rooms of the unit were left dirty at the end of the tenancy. The carpets had been professionally cleaned just prior to the tenant moving into the unit and I therefore find the tenant is responsible for the condition of the carpets at the end of the tenancy. Consequently, I find in favor of the landlord's claim to recover **\$189.00**.

As the landlord's application has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain the security deposit of \$384.00 in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Liquidated damages fee	\$384.00
Cleaning	\$90.00
Carpet cleaning	\$189.00
<b>Subtotal</b>	<b>\$663.00</b>
Plus filing fee	\$100.00
Less security deposit	(-\$384.00)
<b>Total amount due to the landlord</b>	<b>\$379.00</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$379.00. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: April 13, 2017

---

Residential Tenancy Branch