



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, MND, MNSD, MNDC, OLC, CNC, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 09, 2017 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of her security deposit, to dispute a rent increase, to cancel a Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant withdrew the application to cancel a Notice to End Tenancy for Cause.

The Tenant stated that on September 01, 2017 the Tenant's Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on September 11, 2017 were sent to the Landlord, via

registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On January 15, 2018 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on January 12, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

I specifically note that the Tenant has alleged there were a variety of problems with this tenancy, which were not referenced in this decision as they are not relevant to the issues in dispute at these proceedings. In the event this tenancy was continuing, these issues may have been relevant in such that it may have been necessary to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement. As this tenancy has ended, there is no need to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement

#### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or damages?

Is the Landlord entitled to retain the security deposit or should it be returned to the Tenant?

Has there been an unlawful rent increase?

#### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on April 28, 2009;
- at the start of the tenancy rent was \$700.00;
- rent was due by the first day of each month;
- a condition inspection report was completed at the start of the tenancy;
- the Tenant paid a security deposit of \$300.00;
- on July 11, 2017 the Tenant gave the Landlord written notice of her intent to vacate the rental unit on July 31, 2017;

- the Tenant had moved all of her property out of the unit by July 15, 2017 but the unit had not yet been fully cleaned; and
- the Landlord received a forwarding address for the Tenant, in writing, on July 27, 2017.

The Landlord is seeking compensation of \$124.09 for replacing blinds.

The Landlord stated that one set of blinds in the living room and blinds in both bedrooms were damaged by the Tenant's cat.

The Tenant stated that the blinds in the living room were not damaged, as depicted by her photograph #5. She stated that there were no blinds on the second window in the living room, although there were curtains. She stated that the blinds in the bedrooms were not damaged by her cats but were damaged due to normal wear and tear, due to the age of the blinds.

The Landlord stated that he had removed the damaged blinds from the windows prior to the Tenant taking photographs on July 27, 2017 and that he did not submit photographs of the damaged blinds.

The Landlord is seeking compensation of \$168.00 for carpet cleaning. The parties agree that the carpets had not been cleaned by July 27, 2017.

The Tenant stated that she returned to the rental unit on July 27, 2017 for the purposes of cleaning the carpet in the rental unit. She stated that when she entered the unit she found items belonging to the Landlord in the rental unit, which caused her to believe that he had been cleaning and making repairs to the unit. She stated that she found tools in the rental unit, windowing coverings had been removed, and the Landlord had been painting.

The Tenant contends that she was intended to clean the carpet herself on July 27, 2017 but she was unable to do so because the Landlord left property in the rental unit.

The Landlord agrees that he moved a few times into the rental unit on July 27, 2017 but he argues that the Tenant could simply have moved the small amount of property he had in the rental unit for the purposes of cleaning the carpet. The Tenant contends that moving the Landlord's property constituted extra work for her.

The Tenant submitted photographs of the unit, which she took in July 27, 2017. The parties agree that the bed in the photographs was not moved into the unit in July of 2017. The parties agree that this bed was inside the unit during the latter part of the tenancy, although it belonged to the Landlord.

The Landlord submitted an invoice, dated August 15, 2017, which indicates he was charged \$157.50 for cleaning the carpet.

The Landlord and the Tenant agree that the Tenant returned the keys to the Landlord on July 27, 2017, after she discovered the Landlord's items in the rental unit.

The Landlord is seeking unpaid rent from August of 2017. He stated that he was unable to re-rent the unit due to the late notice to end the tenancy that was provided by the Tenant.

The Landlord stated that on July 28, 2017 or July 29, 2017 he advertised the rental unit on Facebook and he posted a notice at the local hospital. He stated that a few people expressed interest in renting the unit for August but he could not rent it to them because he could not get the carpets cleaned until August 15, 2017. He stated that he was able to find a new tenant for September 01, 2017.

The Landlord and the Tenant agree that the Landlord reduced the rent from \$700.00 to \$650.00. The Tenant does not recall when this rent reduction occurred and the Landlord stated that it occurred approximately one year after the tenancy began. The Tenant stated that the rent reduction was offered to her as an incentive to continue to live at the rental unit and the Landlord stated that it was offered simply because he is a "nice guy".

The Landlord and the Tenant agree that the rent was increased from \$650.00 to \$660.00, without written notice of the increase. The Tenant stated the rent was increased sometime in 2017 and the Landlord stated that the rent increase was effective on January 01, 2017.

The Landlord and the Tenant agree that at some point in 2017 the Tenant began paying rent of \$700.00. The Tenant stated that she began paying this amount "sometime in the last six months" and the Landlord stated that she began paying it in April or May of 2017. The Tenant stated that she began paying this amount because the Landlord was complaining about her pets. The Landlord speculated that the Tenant began paying additional rent because she believed she was not paying enough or perhaps because she felt guilty that she had not paid a pet damage deposit. The parties agree that the Landlord did not ask the Tenant to pay the increased rent.

The Landlord and the Tenant agree that the Tenant sent the Landlord a text message, in which she arranged to meet on July 31, 2017 to complete the final inspection of the rental unit.

The Tenant stated that she did not attend the final inspection on July 31, 2017 because she believed the Landlord's activities in the rental unit prior to the end of the tenancy interfered with her ability to establish that she had not damaged the unit during the tenancy.

The Landlord stated that he did not provide the Tenant with written notice of a second time to participate in a final inspection of the rental unit.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) stipulates that when a tenant vacates a rental unit the tenant must live the rental unit reasonably clean and undamaged, except for normal wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was obligated to repair the damaged blinds. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborate the Landlord's submission that the blinds were damaged by the Tenant's cat or that refutes the Tenant's submission that the blinds were damaged by normal wear and tear. As the Landlord has failed to establish that the blinds were damaged by normal wear and tear, which the Tenant is not obligated to repair, I dismiss the Landlord's claim for replacing the blinds.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to clean the carpet in the rental unit at the end of the tenancy. On the basis of the photographs submitted in evidence, I cannot conclude that the items moved into the rental unit by the Landlord on July 27, 2017 prevented her from cleaning the carpets. Rather, I find that it would have taken minimal effort to move those few items and that she could then have cleaned the carpet.

As the Tenant did not comply with her obligation to clean the carpet, I find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was \$157.50.

Section 45(1) of the *Act* permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. I find that the notice the Tenant gave to end this tenancy did not comply with section 45(1) of the *Act*, as she did not provide written notice until July 11, 2017. As the notice declared the tenancy was ending on July 31, 2017, I find that it did not provide the Landlord with the required one month notice of the end of the tenancy.

Section 67 of the *Act* authorizes me to require a tenant to pay money to a landlord if the landlord suffers a loss as a result of the tenant not complying with the *Act*, the regulations or a tenancy agreement. In some circumstances a tenant may be required to pay money to a landlord if the landlord experiences a loss of revenue because the tenant did not give proper notice to end the tenancy.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

In these circumstances I find that the Landlord did not take reasonable steps to minimize the loss of revenue he experienced for August of 2017. In reaching this conclusion I was heavily influenced by the Landlord's testimony that a few people expressed interest in renting the unit for August but he could not rent it to them because he could not get the carpets cleaned until August 15, 2017. Given that the Landlord had the keys to the rental unit on July 27, 2017 I find that the delay in cleaning the carpet was unreasonable. I find that it was the delay in cleaning the carpet, rather than the late notice that prevented the Landlord from renting the unit for August and I therefore dismiss his claim for rent for August of 2017.

On the basis of the undisputed evidence I find that when this tenancy began in 2009 the rent was \$700.00 and that the rent was reduced, approximately one year later, to \$650.00.

On the basis of the undisputed evidence I find that on January 01, 2017 the rent was increased, without written notice, from \$650.00 to \$660.00.

Section 42(2) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the *Act* stipulates that a notice of a rent increase must be in the approved form. The approved form is RTB-11A. As the Landlord did not provide the Tenant with written notice of the rent increase, on the approved form, I find that the rent increase of \$10.00 that was imposed on January 01, 2017 did not comply with section 42 (3) of the *Act*.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase. As the Landlord collected a rent increase of \$10.00 per month for the period between January 01, 2017 and April 30, 2017 which did not comply with the *Act*, I find that the Tenant is entitled to a refund of that increase, in the amount of \$40.00.

On the basis of the undisputed evidence I find that the Tenant voluntarily began paying rent of \$700.00 sometime in 2017. As the Tenant did not recall exactly when she started paying the increased rent and the Landlord stated that she began paying it in

April or May of 2017, I find it reasonable to conclude that additional rent was paid for May, June, and July of 2017. As the parties were not certain of when the payments began, I find I cannot conclude that the additional rent was paid prior to May 01, 2017.

As there is no evidence that the rent was lawfully increased to \$700.00 for May, June, and July of 2017, I find that the Tenant was not obligated to pay rent in that amount. As the Landlord collected rent of \$700.00 for those months and he was only entitled to collect rent of \$650.00, I find that the overpayments must be returned to the Tenant, in the amount of \$150.00.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. (Emphasis added) I find that the Tenant remained obligated to participate in an inspection of the rental unit at the end of the tenancy even though the Landlord had entered the unit to make repairs prior to July 31, 2017 because another tenant had not yet moved into the unit.

Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least two opportunities to, as prescribed, for a final inspection. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant's right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

On the basis of the undisputed evidence I find that the Landlord did not provide the Tenant with a second opportunity to inspect the rental unit on the approved form. I therefore find that the Landlord did not comply with section 35(2) of the *Act*.

Section 36(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2) of the *Act* and the tenant has not participated on either occasion. As the Landlord did not comply with section 35(2) of the *Act*, I find that the Tenant has not extinguished her right to the return of the security deposit, even though she did not participate in the final inspection on July 31, 2017.

I find that the Applications for Dispute Resolution filed by each party have merit. I therefore find that they must each accept the cost of filing an Application for Dispute Resolution and I dismiss their applications to recover these fees.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$157.50 for cleaning the carpet. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep \$157.50 from the Tenant's security deposit of \$300.00, in full satisfaction of the monetary claim. As the Landlord has failed to establish the remaining \$142.50 of the security deposit, I find that it must be returned to the Tenant

The Tenant has established a monetary claim, in the amount of \$190.00, for a rent refund.

Based on these determinations I grant the Tenant a monetary Order for \$332.50, which reflects a partial return of the security deposit plus the rent refund of \$190.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced 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 *Act*.

Dated: February 06, 2018

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Residential Tenancy Branch