



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 25, 2017, a Canada post tracking number was provided as evidence of service. The item was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed services provisions under the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on September 15, 2016. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00 and a pet damage

deposit of \$550.00. The tenancy ended on August 1, 2017. The pet damage deposit was returned to the tenant.

A move-in and move-out condition inspection report was completed; the tenant left the property before the inspection was completed.

The landlord claims as follows:

a.	Repaint the rental unit	\$3,780.00
b.	Furniture hauling	\$ 99.75
c.	Lock change and cleaning	\$ 270.00
d.	Filing fee	\$ 100.00
	Less credit on tenant ledger	\$ -253.83
	<b>Total claimed</b>	<b>\$3,995.92</b>

The landlord's agent testified that the tenant painted the rental unit a dark burgundy colour without the consent of the landlord. The agent stated the tenant attempted to repaint the unit; however, it was a light green.

The landlord's agent testified that they do not allow the tenants to paint as they keep all units in a neutral color. The agent stated that they had to hire a painter to repaint the unit back to its original colour. The landlord seeks to recover the amount of \$3,780.00. Filed in evidence is a receipt and photographs.

The landlord's agent testified that the tenant left furniture in the rental unit, which they had to pay to remove and dispose. The landlord seeks to recover the amount of \$99.75. Filed in evidence is a receipt and photographs.

The landlord's agent testified that the tenant left without returning the key and the rental unit was not left reasonable clean. The landlord seeks to recover the cost to have the lock changed and for cleaning in the total amount of \$270.00. Filed in evidence is a receipt and photographs.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord(s) reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed evidence of the landlord's agent that the tenant painted the rental unit without the consent of the landlord. I find the tenant breached the Act, as they are required to leave the rental unit undamaged, this would include painting the premises back to its original colour. Therefore, I find the landlord is entitled to recover the cost of repainting in the amount of **\$3,780.00**.

I accept the undisputed evidence of the landlord's agent that the tenant left furniture behind that had to be removed, failed to return the keys and left the rental unit dirty. I find the tenant breached the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for these items in the total amount of **\$369.75**.

I find that the landlord has established a total monetary claim of **\$4,249.75** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$550.00** and the credit on the tenant's ledger of **\$253.83** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,445.92**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal 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: March 09, 2018

---

Residential Tenancy Branch