



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security/pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*;
- and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. Tenant C.P. (herein referred to as "the tenant") attended the hearing and spoke on behalf of both the tenants. Landlord's agent Z.B. (herein referred to as "the landlord") attended the hearing on behalf of the commercial landlord. The tenant confirmed that they were in receipt of the landlord's application and evidentiary materials, and the landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or compensation?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord submitted the written tenancy agreement into documentary evidence. Both parties agreed to the following information regarding the tenancy agreement. This tenancy began as a fixed term tenancy on June 1, 2009, converted to a month to month tenancy as of June 2010, and ended on November 30, 2017. Monthly rent in the amount of \$1,767.00 was due on the first of the month. The tenant paid a security deposit of \$775.00 at the beginning of the tenancy, which the landlord continues to hold. A condition inspection report was completed at both move-in and move-out with the tenant, and the tenant was provided with a copy of each report.

Both parties agreed that on November 2, 2017 the tenant provided notice to end the tenancy by text message to the landlord. The tenant's text message stated that the tenant would move out by November 30, 2017. The landlord responded by text message to advise the tenant that this was late notice and that the tenant may be responsible for December's rent if a new tenant was not found for December 1, 2017.

Subsequently, on November 20, 2017, the tenant provided the landlord with written notice confirming that they would be moving out by November 30, 2017 and written notice of the tenant's forwarding address.

The landlord testified that she began to advertise the rental unit for rent on their company's website and on a popular online rental website on November 2, 2017 in response to the tenant's text message advising of their intent to move out of the unit by the end of November 30, 2017. The landlord stated that there were two to three showings before a new tenant was secured and a new tenancy agreement was signed on December 30, 2017 for the new tenant to move in on January 1, 2018.

The tenant confirmed that he was aware showings of the rental unit had taken place between November 15 to 25, 2017. The tenant alleges that the landlord was showing

the unit prior to renovations to the kitchen and bathroom being done, and therefore had no intention of renting the unit, in its state at the time.

The landlord testified that the kitchen and bathrooms are not renovated when a tenant moves out, per company practice. In this case, she believed that the lighting in these rooms may have been changed but no substantial renovations were done. The landlord confirmed that since the tenant had been in the unit for almost 10 years, the original carpeting had to be replaced and the walls painted, all due to normal wear and tear. The landlord stated that these repairs were finished by December 5, 2017.

The tenant referenced articles regarding the region's low rental vacancy rate in support of his claim that he should not be liable for the one month's rent.

The landlord explained that the month of December leading up to the holidays is not as busy for rentals as other times of the year.

The landlord entered into documentary evidence a "security deposit refund" form listing the tenant's original deposit of \$775.00, less a deduction for December 2017 rent of \$1,767.00 due to late notice to end tenancy, resulting in the amount of \$992.00 owed by the tenant after application of the security deposit towards the rent owed for December 2017. The tenant's signature is shown below the statement "The above deductions are agreed to by the tenant". The tenant acknowledged signing the form, but stated he only did so to acknowledge that this is what he understood the landlord was requesting, and as he did not want to be confrontational and possibly incur other charges by not agreeing to the ones noted on the form.

The landlord stated that she tried to contact the tenant in the first week of December 2017 to obtain the outstanding amount of \$992.00 owing, but the tenant did not respond. On December 13, 2017, the landlord filed an Application of Dispute Resolution in relation to this matter.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the

claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed rental loss for the month of December 2017 due to the tenant providing late notice to end the tenancy.

Based on the testimony of both parties and the tenancy agreement submitted into documentary evidence, I find that the landlord and tenant had a fixed term tenancy that converted to a periodic tenancy agreement as of June 2010, and continued as such until the end of the tenancy. I find that rent was payable on the first day of each month per the terms of the tenancy agreement.

Section 45(1) of the *Act* sets out how a tenant may end a periodic tenancy:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) 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.

This means that if a tenant's rent was payable on the first of the month, it requires that a notice to end tenancy be given prior to that day, which would be no later than the 30<sup>th</sup> or the 31<sup>st</sup> of the month (or the 28<sup>th</sup> or 29<sup>th</sup> in the case of February), and that the date the tenancy ends is at least one month after the date the landlord receives the notice.

Section 45(4) of the *Act* requires that the notice must comply with section 52 of the *Act* in terms of the form and content of the notice to end tenancy.

Section 52 of the *Act* explains the requirements for giving notice to the other party to end a tenancy, and provides the following, in part:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,...

In this case, the tenant provided his notice to end tenancy on November 2, 2107, by text message, which is not in compliance with section 52 of the *Act*. On November 20, 2017, the tenant provided a letter in writing, to the landlord confirming that he would be ending the tenancy on November 30, 2017 and stating his forwarding address. The tenant did not sign the letter, however, it otherwise met the requirements for providing notice pursuant to section 52 of the *Act*. Therefore, I find that the tenant provided written notice the landlord to end the tenancy on November 20, 2017 pursuant to section 52 of the *Act*.

Given that I have found that the tenant gave written notice to end the tenancy on November 20, 2017, and given that the tenant provided November 30, 2017 as the effective date to end the tenancy, the tenant did not provide the landlord with at least one month between the time the landlord received the notice and the tenant's end date of the tenancy, in contravention of section 45(1) of the *Act*.

Therefore, I find that the tenant failed to give notice to end the tenancy in compliance with the *Act*, and as a result the landlord experienced a monetary loss.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss provides guidance regarding the expectation for a landlord to mitigate a rental income loss due to a tenant providing short notice to end a tenancy, as follows:

*Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.*

The landlord testified that she began to advertise the rental unit on November 2, 2017, after receiving the tenant's text message ending the tenancy. Both parties agreed that the rental unit was shown to prospective renters starting around the middle of November 2017. I find this undisputed testimony lends support to the landlord's claim that she began advertising the rental unit upon receipt of the tenant's text message at the beginning of November.

According to the landlord's testimony, the flooring replacement and painting of the rental unit was completed by December 5, 2017. Given the long tenure of the tenant in the unit, I find it reasonable that the landlord would need to undertake these repairs at the end of the tenancy and that they were completed in a reasonable amount of time.

Given that the landlord took action to advertise the rental unit and set up showings of the unit, based on only the tenant's text message notice to end tenancy, and that the necessary repairs to the unit were completed in a timely fashion, I find that the landlord took reasonable efforts to find a new tenant to move in after the effective date of the tenant's notice.

In summary, based on the documentary evidence and testimony provided, I find that the landlord has shown on a balance of probabilities that a loss of one month's rent in the amount of \$1,767.00 was incurred as a result of the tenant's non-compliance with the terms of the tenancy agreement and the *Act*. Accordingly, I find that the landlord is entitled to a monetary award in the landlord's favour for that amount.

The landlord is seeking to retain the tenant's security deposit in partial satisfaction of this monetary claim. As such, I must first determine if either party extinguished their rights to the security deposit.

Both parties participated in conducting condition inspections of the rental unit at move-in and move-out, and a report was provided, as required by sections 23 and 35 of the *Act*. Therefore, I find that neither party has extinguished their rights to the deposits pursuant to sections 24 and 36 of the *Act*. As such, I must make a determination based on the provisions of section 38 of the *Act*.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit pursuant to section 38(6) of the *Act*.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. In this

case, the landlord received the tenant's forwarding address in writing on November 20, 2017, however the tenancy did not end until November 30, 2017, per the letter provided by the tenant on November 20, 2017 which stated, "We will have moved out by November 30, 2017".

Therefore, I find that the landlord had 15 days from the end of the tenancy on November 30, 2017 to file an Application for Dispute Resolution seeking to claim against the tenant's security deposit. As the landlord's application was filed on December 13, 2017, which is within 15 days of the end of the tenancy, I find that the landlord complied with section 38(1) of the *Act* and is entitled to claim against the tenant's security deposit.

The tenant's claim that he had signed the "security deposit refund" form agreeing to allow the landlord to retain the security deposit without intending to follow through with that agreement is not a factor for consideration, as I have made the findings that the landlord is entitled to claim against the tenant's security deposit, and the landlord's claim is greater than the total amount of the security deposit held by the landlord.

As I have found the landlord is entitled to a monetary award in the amount of \$1,767.00, I allow the landlord to retain the tenant's \$775.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour, in accordance with sections 38 and the offsetting provisions of 72 of the *Act*.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. A summary of the monetary award is provided as follows:

Item	Amount
Monetary award to the landlord of one month's rent	\$1,767.00
Landlord to retain security deposit in partial satisfaction of monetary award	(775.00)
Remaining amount of monetary award owing to the landlord	= \$992.00
Recovery of filing fee for this Application	+ 100.00
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$1,092.00</b>

### Conclusion

I order the landlord to retain the \$775.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$1,767.00

for loss due to the tenant ending the tenancy without sufficient notice as required by the tenancy agreement and the *Act*.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,092.00 in satisfaction of the remaining amount of loss owing, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: July 13, 2018

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Residential Tenancy Branch