



# Dispute Resolution Services

Page: 1

## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MNDLS, MNRLS, MNDCLS, FFL

#### Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord under the *Residential Tenancy Act* (“Act”) for a monetary order for damage to the unit, site or property, for authorization to retain the tenants’ security deposit and pet damage deposit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Two agents for the landlord (“agents”), a tenant agent, and a cousin of the tenants attended the teleconference hearing. During the hearing the parties were affirmed and given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Regarding documentary evidence, although the landlord filed their application on November 24, 2017 the landlord did not submit their evidence until it was too late and passed the deadline for submission of evidence under the Residential Tenancy Branch (“RTB”) Rules of Procedure (“rules”). The agent stated that this was due miscommunication and a change of agent for the landlord which I don’t find to be a valid reason for the submission of late evidence. As a result, all of the landlord’s late evidence was excluded from the hearing as they served it late which was confirmed by the tenants and I find that when the landlords filed in November of 2017 that they were unable to provide a valid reason for serving their evidence late which is contrary to the rules.

#### Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party. I note that the email address for the landlord has changed from the email address provided on their application as landlord agent JH no longer works for the landlord company and as a result the email address of landlord agent DB was confirmed during the hearing.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit and pet damage deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

While the parties agreed that there was a written tenancy agreement between the parties, a copy was not submitted in evidence. The parties agreed that a fixed-term tenancy began on June 1, 2017 and was scheduled to revert to a month to month tenancy after May 31, 2018. The tenants paid a security deposit of \$2,100.00 and a pet damage deposit of \$2,100.00 at the start of the tenancy which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$14,600.00 actually totals \$14,210.02 and is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Hedge trimming, grass cut	\$1,102.50
2. Rekey locks	\$378.00
3. Paint	\$65.84
4. Flea inspection	\$136.50
5. House cleaning	\$315.00
6. Water bill	\$909.10
7. Hydro bill	\$96.58
8. Replace carpets	\$1,869.00
9. Commission check	\$3,037.50
10. November and ½ of December loss of rent	\$6,300.00
<b>TOTAL</b>	<b>\$14,210.02</b>

Regarding item 1, the landlord has claimed \$1,102.50 for the cost to do hedge trimming and grass cutting which is dismissed in full as the landlord failed to provide a condition inspection report for my consideration, there was no photo evidence or invoice to support this claim and there was no tenancy agreement or addendum submitted for my consideration that supports that the tenants were responsible for hedge trimming and grass cutting. I find that this portion of the landlord's claim does not meet the burden of proof which will be discussed later in this decision.

Regarding item 2, the landlord has claimed \$378.00 for the cost to rekey the rental unit; however, when the tenants testified that they returned the keys the agent confirmed that he was unsure on the status of the keys being returned and as a result, this portion of the landlord's claim was dismissed due to insufficient evidence.

Regarding item 3, the landlord has claimed \$65.84 for touch-up painting which was dismissed during the hearing as the landlord failed to submit an outgoing condition inspection report for my consideration and that there were no photos or receipts to support this portion of their claim. I find that this portion of the landlord's claim does not meet the burden of proof which will be discussed later in this decision.

Regarding item 4, the landlord has claimed \$136.50 for a flea inspection however admitted that they perform the flea inspection as a precaution and did not have evidence to support that there were fleas in the rental unit after the tenants vacated. As a result, this portion of the landlord's claim was dismissed as I

find precautionary work is not the responsibility of the tenants under the *Act*. I find that this portion of the landlord's claim does not meet the burden of proof which will be discussed later in this decision.

Regarding item 5, the landlord has claimed \$315.00 for the cost to clean the rental unit. The tenants testified that cleaning was performed before they vacated and that they had the carpets professionally cleaned and that a house cleaner was at the rental unit for "half of a day" according to the tenants. The tenants submitted in evidence a receipt for the professional carpet cleaning dated October 11, 2017. The landlord did not provide photo evidence or a condition inspection report for my consideration or a receipt with an hourly total for cleaning expenses.

Regarding item 6, the parties reached a mutual agreement that the tenants would pay the landlord \$378.80 for the tenants' portion of the water bill.

Regarding item 7, the landlord has claimed \$96.58 for unpaid hydro bills up to December 14, 2017 as new tenants began to occupy the rental unit as of December 15, 2017 according to the agents. There is no dispute that the tenancy agreement did not include the cost of hydro utilities. The landlord stated that the amounts of \$39.17 and \$57.41 were owed by the tenants and the tenants confirmed that amount was not paid by the tenants during the hearing.

Regarding item 8, the landlord has claimed \$1,869.00 for the cost to replace the rental unit carpets which was dismissed during the hearing as the agent was unable to provide the age of the carpets, did not submit photo evidence and did not have the condition inspection reports before me for consideration. I find that this portion of the landlord's claim does not meet the burden of proof which will be discussed later in this decision.

Regarding item 9, the landlord has claimed \$3,037.50 to re-rent the rental unit as the tenants vacated the rental unit on October 31, 2017 which is a breach of the fixed term tenancy. Monthly rent was \$4,200.00 per month and this portion was dismissed during the hearing as a tenancy agreement with a liquidated damages clause was not submitted for my consideration and I find the amount claimed to be excessive as it exceeds half of a month's rent and does not meet the burden of proof which will be discussed later in this decision.

Regarding item 10, the landlord has claimed \$6,300.00 in loss of rent comprised of \$4,200.00 for November 2017 and \$2,100.00 for ½ of December 2017. The agent stated that the tenants vacated the rental unit on October 31, 2017 and were not able to secure a new tenant until December 15, 2017 when new tenants moved into the rental unit. The tenants stated that they believe the landlord did not minimize their loss by finding a new tenant sooner than December 15, 2017.

### Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or loss that was incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** - The landlord has claimed \$1,102.50 for the cost to do hedge trimming and grass cutting which was dismissed in full during the hearing as I find the landlord failed to meet part ones one, two and three of the test for damages or loss described above. The landlord did not provide a copy of the tenancy agreement or addendum indicating that hedge trimming was required, nor was there an invoice for my consideration, a condition inspection report or photographic evidence. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 2** - The landlord has claimed \$378.00 for the cost to rekey the rental unit; however, this item was also dismissed during the hearing as the tenants testified that they returned the keys and the agent confirmed that he was unsure on the status of the keys being returned. Therefore, I find the landlord failed to meet part ones one, two and three of the test for damages or loss described above as the landlord acknowledge that they were unsure about the status of the keys. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 3** - The landlord has claimed \$65.84 for touch-up painting which, as indicated above, was dismissed during the hearing as the landlord failed to submit an outgoing condition inspection report for my consideration and that there were no photos or receipts to support this portion of their claim. I find the landlord failed to meet part ones one, two and three of the test for damages or loss described above. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 4** - The landlord has claimed \$136.50 for a flea inspection which was dismissed during the hearing as the agent confirmed that there was no evidence to support that there were fleas in the rental unit after the tenants vacated. As a result, this portion of the landlord's claim was dismissed as I find precautionary work is not the responsibility of the tenants under the *Act*. I find the landlord failed to meet all four parts of the test for damages or loss described above. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 5** - The landlord has claimed \$315.00 for the cost to clean the rental unit. The tenants testified that cleaning was performed before they vacated and that they had the carpets professionally cleaned and that a house cleaner was at the rental unit for “half of a day” according to the tenants. I have considered the tenants receipt for the professional carpet cleaning dated October 11, 2017. As the landlord did not provide photo evidence or a condition inspection report for my consideration or a receipt with an hourly total for cleaning expenses I dismiss this portion of the landlord’s claim due to insufficient evidence, without leave to reapply. I find the landlord failed to meet part ones one, two and three of the test for damages or loss described above.

**Item 6** - The parties reached a mutual agreement that the tenants would pay the landlord \$378.80 for the tenants’ portion of the water bill. As a result, this item was resolved by way of a mutually settled agreement pursuant to section 63 of the *Act*.

**Item 7** - The landlord has claimed \$96.58 for unpaid hydro bills up to December 14, 2017 as new tenants began to occupy the rental unit as of December 15, 2017 according to the agents. There is no dispute that the tenancy agreement did not include the cost of hydro utilities. Section 45(2) of the *Act* applies and states:

**Tenant's notice**

**45** (2) A tenant may end a fixed term 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,**
- (b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**
- (c) **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.**

[My emphasis added]

Based on the above, I find the tenants breached section 45(2) of the *Act* by vacating the rental unit on October 31, 2017 which is before the fixed term end date of May 31, 2018. Therefore, I find the tenants are liable for the hydro utilities until December 14, 2017 as I accept that new tenants did not occupy the rental unit until December 15, 2017. Therefore, as the tenants confirmed they did not pay the \$96.58 hydro bill total to the landlord, I find the tenants owe that amount. Therefore, I grant the landlord **\$96.58** as claimed as I find the landlord has met the burden of proof.

**Item 8** - The landlord has claimed \$1,869.00 for the cost to replace the rental unit carpets. This portion was dismissed during the hearing as the agent was unable to provide the age of the carpets, did not submit photo evidence and did not have the condition inspection reports before me for consideration. According to RTB Policy Guideline 40 – Useful Life of Building Elements (“policy guideline 40”) the useful life of carpets is 10 years. As the landlord was unable to confirm the age of the carpets I am unable to determine if the carpets were not beyond their useful life and I find the landlord has failed to meet the burden of proof accordingly. Therefore, this item is dismissed without leave to reapply, due to insufficient evidence.

**Item 9** – Although the landlord has claimed \$3,037.50 to re-rent the rental unit as the tenants vacated the rental unit on October 31, 2017 which is a breach of the fixed term tenancy, I find the landlord has failed to meet parts three and four of the test for damages or loss. Firstly, I do not have a tenancy agreement or addendum before me that confirms that the tenants agreed to \$3,037.50 as liquidated damages, nor do I have any liquidated damages clause to consider that was properly served for this hearing. Secondly, I find the amount to be excessive as it exceeds ½ of a month's rent. Therefore, this item is dismissed without leave to reapply, due to insufficient evidence.

**Item 10** - The landlord has claimed \$6,300.00 in loss of rent comprised of \$4,200.00 for November 2017 and \$2,100.00 for ½ of December 2017. The agent stated that the tenants vacated the rental unit on October 31, 2017 and were not able to secure a new tenant until December 15, 2017 when new tenants moved into the rental unit. Although the tenants stated that they believe the landlord did not minimize their loss by finding a new tenant sooner than December 15, 2017, I disagree. I find that between October 31, 2017 and December 15, 2017 is a reasonable time to secure new tenants and that the landlord has met their obligation under section 7 of the *Act*. Therefore, I find the tenants breached section 26 of the *Act* which states that rent is due on the date that it is due in accordance with the tenancy agreement, and owe **\$6,300.00** in loss of rent comprised of \$4,200.00 for November 2017 and \$2,100.00 for December 1-14, 2017 inclusive.

**I caution** the tenants to comply with sections 45(2) and 26 of the *Act* in the future.

As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$6,496.58** comprised of \$96.58 for item 7, \$6,300.00 for item 10, plus \$100.00 for the recovery of the cost of the filing fee. Pursuant to section 38 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$2,100.00 and pet damage deposit of \$2,100.00 which when combined total \$4,200.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of **\$2,296.58**.

### Conclusion

The landlord's claim is partially successful as described above.

I order the parties to comply with their mutual settled agreement portion described above pursuant to section 63 of the *Act*.

The landlord has established a total monetary claim in the amount of \$6,496.58 as described above. The landlord has been authorized to retain the tenants' combined deposits of \$4,200.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of \$2,296.58. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants have been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2018

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Residential Tenancy Branch