



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDCL-S, MNRL-S, MNDL-S, FFL

### Introduction

A hearing was convened on May 02, 2018 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on May 02, 2018 was adjourned for reasons outlined in my interim decision of May 03, 2018. The hearing was reconvened on July 24, 2018 and was concluded on that date.

At the hearing on July 24, 2018 the Agent for the Landlord stated that on June 08, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord previously submitted to the Residential Tenancy Branch 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 stated that the Landlord provided her with photocopies of the photographs that were provided to the Residential Tenancy Branch, which were so dark that the images were not discernable. I was able to adjudicate this matter without referring to the Landlord's photographs and I did not, therefore, adjourn the proceedings to provide the Landlord with an opportunity to re-serve these photographs to the Tenant.

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.

### Preliminary Matter

The Tenant stated that she is unclear on why the Landlord is seeking compensation for damages in the amount of \$730.50, as the amount for each damage claim is not outlined on the Application for Dispute Resolution.

The Tenant stated that she is aware that the Landlord is claiming \$84.00 for carpet cleaning and \$125.00 for general cleaning. She stated that she did not know how much the Landlord was claiming for replacing a parking pass, for replacing keys, and for replacing a toilet seat.

The Agent for the Landlord stated that the amounts claimed for replacing a parking pass and, for replacing keys were listed on a document she referred to as a "Tenant Statement". Neither I nor the Tenant was able to locate a document titled "Tenant Statement" that declares how much the Landlord is claiming for replacing the parking pass or keys.

The Agent for the Landlord stated that the Tenant was informed, via email, that the cost of replacing the toilet seat was \$120.00. The Tenant stated that she recalls discussing the broken toilet seat by email, although she does not recall being informed of the cost of the replacement.

Section 59(5)(b) of the *Residential Tenancy Act (Act)* authorizes me to refuse to accept an Application for Dispute Resolution if it does not provide sufficient particulars of the claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. I refuse to accept the Landlord's claim for compensation for replacing a parking pass, for replacing keys, and for replacing a toilet seat as I find that the Landlord has provided insufficient details of those claims.

In reaching this conclusion I was strongly influenced by the absence of Monetary Order Worksheet or any other list that clearly explains how much compensation the Landlord is claiming for replacing a parking pass, for replacing keys, and for replacing a toilet seat. I find that proceeding with the Landlord's claim for these damages at this hearing would be prejudicial to the Tenant, as the absence of those particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

As the Tenant was aware that the Landlord was claiming \$84.00 for carpet cleaning and \$125.00 for general cleaning, I find it reasonable to consider those claims at these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, to compensation for late fees, and to keep all or part of the security deposit?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2014;
- the rental unit was vacated on August 21, 2017;

- at the end of the tenancy the rent was \$1,653.96 per month;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$775.00;
- the Tenant paid a pet damage deposit of \$250.00;
- on August 05, 2017 the Tenant sent the Landlord an email, in which she gave notice that she was ending the tenancy on September 01, 2017; and
- the Tenant provided a forwarding address, via email, on September 17, 2017.

The Landlord is seeking compensation, in the amount of \$551.32, for lost revenue for the period between September 01, 2018 and September 10, 2017. The Agent for the Landlord stated that the rental unit was advertised on three popular websites on August 08, 2017 and was re-rented for September 10, 2017.

The Landlord is seeking \$300.00 in late fees. The Landlord and the Tenant agree that there is a clause in the tenancy agreement that requires the Tenant to pay \$25.00 whenever she does not pay her rent on time.

The Agent for the Landlord stated that the Tenant was late paying her rent in the following months:

- February of 2015
- March of 2015
- July of 2015
- August of 2015
- October of 2015
- November of 2015
- December of 2015
- January of 2016
- April of 2016
- May of 2016
- June of 2016
- July of 2016
- August of 2016
- October of 2016
- November of 2016
- January of 2017
- April of 2017
- July of 2017.

The Tenant acknowledged that she was often late paying her rent as she was having problems using her banking application; although she does not recall which months she was late paying her rent.

The Landlord is seeking compensation of \$84.00 for cleaning the carpet and \$125.00 for general cleaning. The Tenant agreed to pay these costs.

The Landlord and the Tenant agree that the Tenant has a credit of \$211.77 which should be applied to any debt owed by the Tenant.

### Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act* (*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 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. On the basis of the undisputed evidence I find that the Tenant did not provide the Landlord with written notice to end this tenancy in accordance with section 45 of the *Act*.

I find that the late notice to vacate provided by the Tenant made it difficult for the Landlord to find new tenants for the rental unit for the following month, as it prevented the Landlord from advertising the rental unit at the beginning of the month. I find that the late notice contributed to a loss of rental revenue for the period between September 01, 2017 and September 10, 2017. On this basis, I find that the Tenant must compensate the Landlord for the loss of revenue the Landlord experienced for these nine days, which was \$496.17. (9 X daily rent of \$55.13)

Section 7 of the *Residential Tenancy Regulation* authorizes the landlord to collect a late fee of up to \$25.00 every time a tenant is late paying the rent, providing payment of that fee is required by the tenancy agreement. On the basis of the undisputed evidence I find that the tenancy agreement requires the Tenant to pay a late fee of \$25.00 whenever she is late paying her rent.

On the basis of the undisputed evidence I find that the Tenant was late paying her rent 18 times during this tenancy and I therefore find that the Landlord is entitled to the full amount of the claim for late fees, which is \$300.00.

As the Tenant agreed to pay the Landlord \$84.00 for cleaning the carpet and \$125.00 for general cleaning, I find that the Landlord is entitled to recover those costs from the Tenant.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,105.17, which includes \$496.17 in lost revenue; \$300.00 in late fees; \$209.00 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. The claim of \$1,105.17 must be reduced by the Tenant's credit of \$211.77, leaving a balance due of \$893.40. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$893.40 from the Tenant's security/pet damage deposit of \$1,025.00 in full satisfaction of this monetary claim.

The Landlord must return the remaining \$131.60 of the Tenant's security/pet damage deposit and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not voluntarily 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: July 24, 2018

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Residential Tenancy Branch