



# Dispute Resolution Services

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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      MNDCT MNSD FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- recovery of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord and named personal landlord were represented by their agents. The agent JS (the "landlord") primarily spoke on behalf of both named landlords.

As both parties were present service of documents was confirmed. The landlord testified that they were served with the tenant's application dated December 19, 2017 and evidence. The tenant testified that they had been served with the landlord's evidentiary materials. Based on the undisputed evidence of the parties I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a return of all or part of the security deposit or pet damage deposit for this tenancy?

Is the tenant entitled to recover the filing fee for their application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. This fixed-term tenancy began in May, 2017 and ended on October 31, 2017. The monthly rent was \$785.00 payable on the first of each month. A security deposit of \$392.50 and pet damage deposit of \$200.00 was paid at the start of the tenancy. The parties both participated in, and signed a move-in and move-out condition inspection report. The landlord returned the sum of \$177.50 to the tenant by a cheque dated November 10, 2017.

The tenant submits that the rental unit was in a state of disrepair when they took possession and they spent money to clean the suite to a point where it was habitable. The tenant claims the sum of \$470.00 for various work including stove cleaning, washing the carpets and scrubbing walls and cabinets.

The tenant testified that while they signed a condition inspection report both at the start and end of the tenancy they did not understand the implications of what they were agreeing to by signing. The condition inspection report submitted into documentary evidence shows that no deficiencies or issues were identified at the start of the tenancy.

At the end of the tenancy on October 28, 2017, the tenant signed the portion of the condition inspection report which states that they agree to a deduction of up to \$1,007.50 from the deposits paid for this tenancy. The tenant testified that despite signing a document which clearly indicates that by signing the tenant agrees to the deduction, they did not agree to any deduction from their deposits.

The landlord testified that while they initially were prepared to charge the tenant the sum of \$1,007.50 for cleaning costs and loss of rent due to the tenant's ending the fixed term tenancy before its full term, they were able to re-rent the unit and mitigate their losses. The landlord said that as a result they charged the tenant only the amount of \$415.00 for cleaning costs. The landlord testified that the tenant signed the move-out condition

inspection report indicating that the tenant agrees to the deduction of that amount from their security deposit. The landlord submits that the tenant signed the move-in condition inspection report at the start of the tenancy and did not indicate that there were any deficiencies in the report.

The landlord testified that the balance of the security and pet damage deposit of \$177.50 was issued to the tenant by a cheque dated November 10, 2017. While the tenant submits that they did not receive the funds until November 21, 2017 the landlord testified that their records indicate the cheque was mailed out on November 10, 2017.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

The tenant testified that she signed the condition inspection report. The tenant submits that despite signing the report which provides that the tenant will be charged the amount of \$415.00, they did not agree to any deduction from their deposit. I find the tenant's submission to be logical or with any merit. The tenant signed a document which states the amount that will be deducted from the security deposit. The tenant may not, after signing a document which specifically states that the landlord will charge a specific amount, claim that they did not authorize the landlord to withhold that sum. I find the tenant's submission to be meritless. The landlord was authorized to retain \$415.00 from the security and pet damage deposit for this tenancy.

I accept the undisputed evidence of the parties that this tenancy ended on October 31, 2017 and the tenant had provided a forwarding address prior to the tenancy ending. I accept the evidence of the parties that the landlord issued a cheque dated November 10, 2017 for the balance of the deposits for this tenancy. I find that there is insufficient evidence in support of the tenant's assertion that they did not receive the balance of the security and pet damage deposit until November 21, 2017, after the 15 days authorized under section 38 of the *Act*. I do not find the tenant's testimony, unsupported by any documentary evidence to be sufficient to conclude that they did not receive the deposit

balance within the timeframe provided in the Act. I consequently dismiss this portion of the tenant's application.

I find that the tenant signed the move-in condition inspection report at the start of the tenancy. The copy of the inspection report submitted into evidence by the parties does not indicate that either party found any deficiency in the rental unit. I find that the tenant cannot sign a document which confirms that the rental unit is in an acceptable condition and subsequently claim that there are multiple issues with the suite. I do not find the tenant's testimony to be believable or convincing. I find the tenant's submission of witness statements to be of little value. If the rental unit was in a state of disrepair it is reasonable to expect that the parties would have made some mention of this in the move-in inspection report. Neither party did so. I find that there is insufficient evidence in support of the tenant's claim and accordingly dismiss it.

As I have dismissed the tenant's claim, they are not entitled to recover their filing fee for the application.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: August 7, 2018

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Residential Tenancy Branch