



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes FFL, MNDCL, MNDL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 7, 2018 (the "Application"). The Landlord sought compensation for damage to the rental unit and for monetary loss or other money owed. The Landlord also sought reimbursement for the filing fee.

D.S. and S.E. (the "Agents for the Landlord") appeared for the Landlord at the hearing. Nobody appeared for the Tenant.

The Landlord had filed an amendment to the Application on August 8, 2018 (the "Amendment"). The Amendment changed the monetary claim to \$4,086.70.

I explained the hearing process to the Agents for the Landlord who did not have questions when asked. The Agents for the Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Agents for the Landlord testified as follows. The hearing package and evidence were sent by registered mail to the forwarding address provided by the Tenant via email. The package was sent on June 15, 2018.

The Landlord submitted a Canada Post Customer Receipt with Tracking Number 1 on it. The Customer Receipt is addressed to the Tenant. The Landlord submitted an email from the Tenant providing an address in response to D.S. asking where the final paperwork should be sent. This address is on the Customer Receipt. With permission, I looked Tracking Number 1 up on the Canada Post website which shows the package was unclaimed.

The Agents for the Landlord testified as follows. The Amendment was sent by registered mail to the same address for the Tenant on August 8, 2018. D.S. provided Tracking Number 2. I looked this up on the Canada Post website which shows the package was unclaimed.

Based on the undisputed testimony of the Agents for the Landlord, evidence submitted and Canada Post website information, I find the Tenant was served with the hearing package, evidence and Amendment in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). I note that the Tenant is not permitted to avoid service by failing to pick-up the packages. I also find the hearing package, evidence and Amendment were sent in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents for the Landlord were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the Agents for the Landlord. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. It is between the Landlord and Tenant regarding the rental unit. The tenancy started November 1, 2015 and was for a fixed term ending October 31, 2016 at which time it became a month-to-month tenancy. The Tenant paid a \$1,110.00 security deposit. The agreement is signed by the Tenant and on behalf of the Landlord.

The Landlord requested the following compensation:

1	Writ of possession filing	\$120.00
2	Bailiff removal of Tenant	\$2,500.00
3	Carpet replacement amortized	\$281.47
4	Drapery cleaning	\$113.40
5	Cleaning and replacement	\$603.00
6	Locks and in-house install	\$149.13
7	Drapes replacement amortized	\$44.13
8	Filing fee	\$100.00
9	Balance of bailiff invoice	\$175.57
	<b>TOTAL</b>	<b>\$4,086.70</b>

The Landlord submitted a Condition Inspection Report as evidence. It was completed on move-in and move-out. It was signed on behalf of the Landlord and by the Tenant on move-in. It was not signed by either party on move-out.

D.S. testified as follows in relation to a move-in inspection. Someone for the Landlord and the Tenant did the inspection November 1, 2015. The unit was empty at the time. The Tenant was given a copy of the Condition Inspection Report.

D.S. testified as follows in relation to a move-out inspection. Someone for the Landlord did the inspection around May 25, 2018. The Tenant did not participate as he had been removed by a bailiff. The Tenant was given a copy of the Condition Inspection Report in the evidence package. A copy may have also been emailed to the Tenant.

### ***Items 1, 2 and 9***

D.S. testified as follows in relation to the costs associated with a bailiff removing the Tenant from the rental unit. The Tenant was served with an Order of Possession from a previous arbitration on May 9, 2018. The Order directed the Tenant to vacate the rental unit within two days of service of the Order. The Tenant kept postponing his move-out date until the Landlord no longer believed he would vacate the rental unit. The Landlord had to have a bailiff remove the Tenant from the rental unit. Two bailiffs attended May 25, 2018 and escorted the Tenant out of the rental unit. The Tenant's uninsured vehicle had to be towed. The Tenant's possessions were removed from the rental unit and stored. The costs associated with this process are reflected in items 1, 2 and 9 of the Monetary Order Worksheet.

The Landlord submitted a copy of the Order of Possession. The Landlord submitted a Proof of Service document signed by the Tenant acknowledging receipt of the Order on May 9, 2018. The Landlord submitted a letter, invoices, client ledger and receipts relating to the bailiff services.

### ***Item 3***

D.S. testified as follows in relation to the carpet replacement costs. The Tenant left burn marks, wax and stains on the carpet upon move-out. There were also pulls in the carpet from items being moved across it. The damage could not be repaired. The carpet had to be replaced. The cost claimed takes into account the useful life of the carpet.

The Landlord submitted photos of the damage to the carpet upon move-out. The Landlord submitted an invoice for the carpet replacement. The Condition Inspection Report shows the carpets were in good condition upon move-in and were stained and burnt upon move-out.

### ***Item 4***

D.S. testified as follows in relation to the drapery cleaning. The drapes were professionally cleaned upon move-in. There was staining on the drapes upon move-out.

The Condition Inspection Report shows the drapes were clean upon move-in and dirty upon move-out. The Landlord submitted an invoice for the drapery cleaning.

***Item 5***

The Agents for the Landlord testified as follows in relation to the cleaning and replacement costs claimed. The charges are noted on the Condition Inspection Report and include:

1. \$55.00 to clean the oven
2. \$30.00 to clean the hood on the range
3. \$45.00 to clean the fridge
4. \$10.00 to replace a burnt-out bulb in the kitchen
5. \$180.00 to repair damage caused by a pole installed in the rental unit
6. \$180.00 to remove garbage left in the rental unit
7. \$35.00 to change the locks
8. \$68.00 for key fobs that were not returned

D.S. testified that the Landlord had the rental unit cleaned by two cleaners at \$30.00 per hour. She testified that the Tenant had installed a pole in the rental unit. She said this caused damage to the floor and ceiling that had to be repaired. D.S. testified that the Tenant had put his own locks in the rental unit that had to be replaced.

The Condition Inspection Report shows that the oven, hood on the range and fridge were dirty upon move-out. It shows a bulb was burnt out in the kitchen. It also refers to the charges for the pole, garbage and lock change.

D.S. testified that the costs of the above are based on the cleaning and replacement charges sheet created by the Landlord.

***Item 6***

D.S. testified as follows in relation to the locks and in-house install charge. The Tenant changed the locks and knobs on the bedroom, bathroom and entrance doors. These had to be changed back to the original locks and knobs. The entrance door lock had to be changed because it was not the proper type of lock and the Tenant did not give the original lock back.

D.S. referred to the cleaning and replacement charges sheet created by the Landlord and an invoice from a home improvement store in relation to the parts for the lock and knob changes.

**Item 7**

D.S. testified that the drapes in the dining room had holes, stains and other damage on them when the Tenant moved out. She said the useful life of the drapes was taken into account in the calculation of the cost claimed.

The Condition Inspection Report shows the drapes were in good condition on move-in and that the drapes in the dining room had to be replaced on move-out. The Landlord submitted an invoice for the dining room drape replacement.

The Landlord submitted photos of the rental unit upon move-out.

Analysis

Section 7 of the *Act* states:

- (1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.
- (2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* addresses tenant's obligations upon vacating a rental unit and states:

- (2) When a tenant vacates a rental unit, the tenant must
  - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

***Items 1, 2 and 9***

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant failed to vacate the rental unit in accordance with the Order of Possession issued in a prior arbitration and that bailiffs had to attend and remove the Tenant from the rental unit. I accept the process cost the amount claimed based on the letter, invoices, client ledger and receipts submitted. I find the cost to be reasonable. I find the Landlord is entitled to recover the costs associated with having bailiffs remove the Tenant from the rental unit and award the Landlord the amount requested.

***Item 3***

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant damaged the carpet in the rental unit. I accept that the damage caused, in particular the burn marks, is beyond reasonable wear and tear and find the Tenant breached section 37 of the *Act*. I accept that the damage could not be repaired and that the carpet had to be replaced. I accept the evidence of the cost of replacing the carpet. The Landlord has accounted for the useful life of carpet in their calculation of the cost claimed. I find the amount claimed to be reasonable and award the Landlord this amount.

***Item 4***

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant left the drapes dirty upon move out and therefore breached section 37 of the *Act*. I also note that the Tenant was required to clean the drapes pursuant to Policy Guideline 1 (page 2-3). I accept that the drapes had to be cleaned. I accept the evidence of the cost of cleaning the drapes and find the cost to be reasonable. I award the Landlord the amount claimed for cleaning the drapes.

***Item 5***

Based on the undisputed testimony of the Agents for the Landlord and the evidence submitted, I accept that the oven and fridge were dirty upon move-out. I accept that the Tenant breached section 37 of the *Act* in this regard. I accept that the oven and fridge had to be cleaned. I accept the cost of the cleaning and note that the Tenant did not appear to dispute this. I find the Landlord is entitled to recover the cleaning costs claimed in relation to the oven and fridge.

Based on the evidence submitted, I accept that there was a bulb burnt out in the kitchen upon move-out. The Tenant is responsible for replacing light bulbs that burn out pursuant to Policy Guideline 1 (page 5). I find the Landlord is entitled to recover the cost of replacing the light bulb and find the \$10.00 claimed to be reasonable.

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant installed a pole in the rental unit and that this caused damage to the floor and ceiling. I do not find this to be reasonable wear and tear and find the Tenant breached section 37 of the *Act*. I accept that the floor and ceiling had to be repaired and find the cost claimed to be reasonable. I award the Landlord the amount requested.

Based on the evidence submitted, I accept that there was garbage left in the rental unit that had to be removed. I find this to be a breach of section 37 of the *Act*. I find the cost claimed for the garbage removal to be reasonable and award the Landlord this amount.

Based on the undisputed testimony of D.S., I accept that the Tenant did not return all keys at the end of the tenancy. I find this to be a breach of section 37 of the *Act*. I find the Landlord is entitled to recover the cost of the keys and find the amount claimed to be reasonable. I award the Landlord the amount requested.

#### ***Item 6***

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant changed locks and knobs in the rental unit and that these had to be changed back to the original locks and knobs. I accept the evidence of the cost associated with changing the locks and knobs. I find the amount claimed by the Landlord under item 5 and 6 to be reasonable and award the Landlord this amount.

#### ***Item 7***

Based on the undisputed testimony of D.S. and the evidence submitted, I accept that the Tenant damaged the drapes in the dining room. I find the damage caused, in particular the holes, to be beyond reasonable wear and tear and find the Tenant breached section 37 of the *Act*. I also note Policy Guideline 1 (page 2-3) states that tenants may be responsible for replacing drapes that they damage. I accept that the dining room drapes had to be replaced and accept the cost of the replacement given the evidence submitted. I find the amount claimed to be reasonable and award the Landlord this amount.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, I award the Landlord the following:

1	Writ of possession filing	\$120.00
2	Bailiff removal of Tenant	\$2,500.00
3	Carpet replacement amortized	\$281.47
4	Drapery cleaning	\$113.40
5	Cleaning and replacement	\$603.00
6	Locks and in-house install	\$149.13
7	Drapes replacement amortized	\$44.13
8	Filing fee	\$100.00
9	Balance of bailiff invoice	\$175.57
	<b>TOTAL</b>	<b>\$4,086.70</b>

The Landlord is entitled to \$4,086.70 and I issue the Landlord a Monetary Order in this amount.

### Conclusion

The Application is granted. The Landlord is entitled to a Monetary Order in the amount of \$4,086.70. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: September 26, 2018

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Residential Tenancy Branch