



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC WELLFARE RESOURCE INVESTMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

On July 22, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, damages, loss of rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 63-minute hearing. The Landlord testified that he recently went through a hearing in July 2018, where service of documents to the Tenants was an issue.

The Landlord stated that he attempted to personally serve the Tenants with the Notice of Hearing by attending the residence of the Tenants and knocking on the door. No one answered the door, so the Landlord placed the three separate envelopes with the evidence and Notice of Hearing details in front of the door and left the residence. The Landlord stated that he watched the front door from his car and observed the occupants of the residence open the door and gather-in the envelopes. The Landlord stated that he was with a co-worker who also witnessed this occurrence. Although the Landlord did not provide a Proof of Service document or call the witness, given the circumstances of potential avoidance of service, I will accept that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid utilities, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages to the rental unit, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation for lost rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord provided the following undisputed evidence:

The six-month, fixed term tenancy began on November 1, 2017 and was scheduled to end on April 30, 2018. The Landlord stated that the tenancy was a fixed term and did not continue as a month-to-month tenancy as the Landlord had planned to move back into the rental and was living there now. The monthly rent of \$2,400.00 was payable on the first of the month. The Tenants were responsible to pay for their own hydro and gas utilities. The Landlord collected and still holds a \$1,200.00 security deposit and a \$1,200.00 pet damage deposit. The Tenants moved out of the rental unit on May 5, 2018.

The Landlord claimed a loss of \$400.00 as the Tenants overstayed the end of their tenancy by 5 days. The Landlord calculated that each day cost him \$80.00 in potential rent.

The Landlord testified that the Tenants failed to pay for their last BC Hydro bill for an amount of \$466.25. The Landlord provided a copy of the bill that showed the statement was relevant for a 52-day period between March 22 to May 22, 2018.

The Landlord provided copies of Fortis BC bills and claimed that the Tenants failed to pay any of these bills from November 1, 2017 to the end of April 2018. The Landlord provided five bills adding up to a total of \$108.76.

The Landlord provided a copy of the move-in/out Condition Inspection Report and stated that one of the Tenants attended the move-in inspection on October 26, 2017 and two of the Tenants attended the move-out inspection on April 28, 2018. The Landlord explained that the signatures on the Report were the Tenants and that they had agreed with the report. The Landlord stated that the Condition Inspection Report indicated that the rental unit was in good condition at the beginning of the tenancy; however, upon move-out, it was noted that there was a strong smell of cat pee throughout the rental unit and that it was not clean. The Landlord stated that the appliances were in good condition; however, the smell of cat urine was very strong on the walls and in the carpets.

The Landlord provided a quote for the repainting of the rental unit as he stated that the smell of cat urine was on the walls. The quote from the contracted company indicated that they noted the following: a strong pet odour in the unit, a light fixture was not working in the kitchen, the interior wall paint colour did not match, and a dent and scratch was located on the wall. The quote stated that the interior repainting and wall repair would be \$3,000.00, and the replacement of the kitchen lighting unit would be \$300.00.

The Landlord stated the entire rental required cleaning and the carpets had to be professional cleaned. After the cleaning, the Landlord stated that the smell was gone, but there were stains left in the carpet; however, he is not making a claim for the new carpets that have since been installed. The Landlord is claiming \$450.00 for the cleaning of the unit and submitted a receipt that also indicated that the whole house was very dirty.

The Landlord stated that he had tried to find new tenants for the rental unit; however, they all stated that the unit smelled of cat pee and would not rent it until it was cleaned. The Landlord claimed that they could not rent the unit out until it was painted and cleaned, and that the Landlord has lost rental revenue for May, June and July 2018 for a total of \$7,200.00.

## Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I find that the Landlord provided some confusing testimony regarding the specifics of the condition inspection reports, I find that the Landlord showed some diligence in participating in the inspections and completing written reports. I find that the Landlord is authorized to make a claim against the security deposit in regard to damages to the rental unit and property.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant, in this case, the Landlord, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(2) of the Act states that a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I accept the Landlord's testimony that the Tenants were responsible for the utilities of hydro and gas and that they did not pay these utilities in accordance with the Tenancy Agreement. The Landlord claimed an outstanding bill for hydro; \$466.25 for a 52-day period between March 22 and May 22, 2018. As the Landlord stated that the Tenants moved out of the rental unit on May 5, 2018 and the daily rate for that hydro bill is calculated at \$8.96 per day ( $\$466.25/52 = \$8.96$ ), I find that the Landlord has

established a monetary claim for unpaid utilities in the amount of 45 days (45 x \$8.96), for a total of \$403.20.

I accept that the Tenants failed to pay their gas utilities in accordance with the Tenancy Agreement and find that the Landlord has established a monetary claim for \$108.76.

Section 37 of the Act states that when Tenants vacate the rental unit, the Tenants must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Landlord provided a quote for the painting of the entire interior of the rental unit, the repair of a wall, and the replacement of a lighting fixture for a total of \$3,300.00. The Landlord did not provide any pictures of the rental unit, describe the damage to the walls, explain why the light fixture wasn't working, or provide a reason why the walls could not have been washed versus painted. I find the Landlord has failed to provide sufficient evidence of a monetary loss based on the Tenants violation of the Act or the Tenancy Agreement. I dismiss this part of the Landlord's claim.

The Landlord testified to the condition of the rental unit, the carpet, and provided a quote for cleaning. The Landlord explained that the carpets required professional cleaning and that the cleaning removed the smell of the cat urine. I accept that the cleaning was required and that the professional carpet cleaning directly addressed the issue of the cat urine. As a result of the Tenants breach of Section 37 of the Act, I find that the Landlord should be compensated for the cost of the cleaning of the rental unit and carpets for a total of \$450.00.

The Landlord has claimed a loss as a result of the Tenants overholding by 5 days in May 2018. The Landlord also claimed 3 months of rental revenue loss and stated that the poor condition in which the Tenants left the rental unit caused the Landlord a delay in finding new tenants.

I accept the Landlord's evidence that the Tenants overstayed their tenancy by five days and as a result, I find the Landlord has established a monetary claim for \$400.00 (5 days x \$80.00 per day).

The Landlord initially stated that the tenancy was established as a fixed term because the Landlord intended to move back into the rental unit and that the Landlord is currently

living in the rental unit. Later in the hearing, the Landlord claimed that he had attempted to find new tenants for the rental unit, conducted various showings and submitted statements from potential tenants who would not move in because of the smell.

The Landlord has claimed the loss of potential rental revenue for the rest of May, June and July 2018 due to not being able to rent out the rental unit; I find that the Landlord failed to provide sufficient evidence that he incurred such a loss as a result of the Tenants breaching the Act or their Tenancy Agreement. The Landlord also failed to provide any evidence that he attempted to mitigate his losses, in accordance with Section 7(2) of the Act. As a result, I dismiss the Landlord's claim of three months loss of rent.

The Landlord's Application has some merit and I find that the Landlord should be compensated for the cost of the filing fee, in the amount of \$100.00.

I find that the Landlord has established a monetary claim, which allows the Landlord to recover unpaid utilities, the cost of cleaning the rental unit, five days of rent and the filing fee for this Application. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep a portion of the Tenants' security deposit and pet damage deposit in the amount of \$1,461.96, and to return the balance to the Tenants.

<b>Item</b>	<b>Amount</b>
Unpaid hydro bill - 45 days	\$403.20
Unpaid gas bill	108.76
Cleaning of rental unit	450.00
Five days of rent (May 1-5, 2018)	400.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Award</b>	<b>\$1,461.96</b>
Minus security deposit and pet damage deposit	-2,400.00
<b>Balance of deposits to Tenants</b>	<b>\$938.04</b>

Based on these determinations, I order the Landlord to return the balance of the deposits to the Tenants, in the amount of \$938.04, in accordance with Section 38 of the Act.

### Conclusion

The Landlord established several monetary claims and has been authorized to apply a portion of the pet damage deposit and the security deposit to the claim. The Landlord is ordered to return the balance of the deposits to the Tenants, in the amount of \$938.04 within fifteen days of receiving this Decision. If the Landlord fails to return the balance of the deposits within 15 days, the Tenants may apply for Dispute Resolution for double the amount.

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: November 27, 2018

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Residential Tenancy Branch