



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on September 14, 2018 wherein the Landlord sought monetary compensation from the Tenant for unpaid rent and cleaning of the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on January 18, 2019.

Only the Landlord's representatives S.H., the Manager of Tenants Services, B.B., the Tenants Services Coordinator and M.D., also a Tenants Service Coordinator called into the hearing. S.H. gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:16 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agents and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's agent, S.H., testified that they served the Tenant with the Notice of Hearing and the Application on September 20, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 30, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord's representatives confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed that this tenancy began July 1, 2011. The Landlord's agent, S.H., testified that the rental unit is in a subsidized building and that at the time the tenancy ended the Tenant's personal rent contribution was \$480.00. S.H. confirmed that the Tenant paid a security deposit of \$333.50.

The tenancy ended on August 31, 2018 and the Landlord applied for dispute resolution in September 14, 2018.

Introduced in evidence was a copy of the move in and move out condition inspection report confirming the condition of the rental unit when the tenancy ended.

The Landlord filed a monetary orders worksheet in which the Landlord claimed the following:

Filing fee	\$100.00
Damages	\$34.00

Unpaid rent	\$2,634.00
<b>TOTAL CLAIMED</b>	<b>\$2,768.00</b>

In terms of the unpaid rent the Landlord submitted a copy of the Tenant Leger confirming the amounts outstanding at the time the tenancy ended. S.H. confirmed that the last time the Tenant paid rent was July 5, 2018.

The Landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent. Although the Tenant initially disputed the Notice, she withdrew her application at the hearing. The file number for the Tenant's Application is included on the unpublished cover page of this my Decision.

S.H. testified that the damages claim relates to the cost to rekey the locks as the Tenant changed the locks on the rental unit. She further advised that the Tenant agreed that the sum of \$34.00 could be taken from her security deposit to pay for the Landlord's cost in this regard; the Tenant's agreement was further confirmed in a document signed by the Tenant on August 31, 2018 titled "Charges Against Security Deposit".

The Landlord also sought recovery of the \$100.00 filing fee.

### Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent as required as evidenced by the Landlord's agent's testimony, the Tenant's leger as well as the 10 Day Notice. I therefore award the Landlord monetary compensation for unpaid rent.

I also accept the Landlord's evidence that the Tenant agreed to pay the \$34.00 cost to change the locks and I award the Landlord recovery of this amount.

The Tenant is reminded that she is not permitted to change the locks as set out in section 31 of the *Act* which reads as follows:

**Prohibitions on changes to locks and other access**

- 31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless
- (a) the tenant agrees to the change, and
  - (b) the landlord provides the tenant with new keys or other means of access to the rental unit.
- (2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.
- (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

The Landlord has been successful in their application and as such I grant them recovery of the \$100.00 filing fee.

**Conclusion**

The Landlord is granted monetary compensation in the amount of **\$2,768.00** for the following:

Filing fee	\$100.00
Damages	\$34.00
Unpaid rent	\$2,634.00
<b>TOTAL CLAIMED</b>	<b>\$2,768.00</b>

Section 72 of the *Act* allows me to order the payment be deducted from the Tenant's security deposit and reads as follows:

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As such, and pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$333.50 security deposit and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,434.50**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: January 22, 2019

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Residential Tenancy Branch