



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY MANAGEMENT  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 30, 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 towards the amounts claimed and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on February 22, 2019.

Only the Landlord's representative K.P. called into the hearing. He 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 1:58 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 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 testified that they served the Tenant with the Notice of Hearing and the Application on October 31, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 November 5, 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'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.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent and cleaning of the rental unit?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the \$100.00 filing fee?

#### Background and Evidence

The Landlord provided in evidence a copy of the residential tenancy agreement confirming that this tenancy began August 15, 2017 for a one year fixed term. Monthly rent was payable in the amount of \$1,180.00 and the tenant paid a \$590.00 security deposit.

The Tenant moved from the rental unit on October 1, 2018.

The Landlord's representative, K.P., stated that the Tenant failed to give notice to end her tenancy. K.P. further stated that on one occasion he was at the rental property and noticed that the Tenant was moving out. When K.P. informed her she did not provide written notice she stated that she did not think she had to. The rental unit was not re-rented until November 1, 2018 such that the Landlord sought monetary compensation for loss of rent for October 2018.

The Landlord also sought monetary compensation for cleaning of the rental unit. K.P. testified that when the tenancy ended the rental unit required cleaning. In support K.P. provided a photo of a large plastic bag of the Tenant's belongings. The Landlord also provided a copy of an invoice in which the following was detailed:

1.00	Oven clean and pull appliances to clean behind and underneath	\$ 35.00	\$ 35.00
2.50	hrs move out clean (last minute booking) including spot wall cleaning, baseboards, floors and interior windows and tracks	\$ 30.00	\$ 75.00

K.P. stated that they attempted to perform a move out inspection with the Tenant but they were unable to get in touch with her as she simply abandoned the rental unit. K.P. further stated that despite offering her two opportunities to complete the report she simply ignored their requests.

On October 26, 2018 the Tenant provided her forwarding address in writing to the Landlord; a copy of that email was provided in evidence.

The Landlord applied for dispute resolution on October 30, 2018.

The Landlord stated that they re-rented the rental unit as of November 1, 2018.

### 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 will first deal with the Landlord's claim for rent for the month of October 2018.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

### **Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

I accept the K.P.'s testimony that the Tenant did not provide written notice to end her tenancy; accordingly, she did not end the tenancy in accordance with the *Act*. As the Tenant only vacated the rental unit on October 1, 2018, I find the Landlord was not able to re-rent the unit for October 2018 and consequently suffered a loss of rent which is recoverable from the Tenant.

I will now turn to the Landlord's claim for cleaning of the rental unit.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

I accept the Landlord's undisputed evidence that the rental unit required cleaning at the end of the tenancy. This was supported by K.P.'s testimony as well as the invoice for cleaning. I therefore find the Landlord is entitled to recover the amounts claimed for cleaning.

Section 72 of the *Act* allows me to award the successful party with recovery of the filing fee. As the Landlord has been successful in their claim, I find they are also entitled to recover the \$100.00 filing fee from the Tenant.

### Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,390.00** for the following:

Unpaid rent for October 2018	\$1,180.00
Cleaning of the rental unit	\$110.00
Recovery of the filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$1,390.00</b>

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$590.00 security deposit and I grant the Landlord a Monetary Order for the **\$800.00** balance due. This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: February 22, 2019

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Residential Tenancy Branch