



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC EDGE PROPERTIES LTD. and

[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDL, MNRL, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 25, 2019 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 23, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on April 17, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on February 01, 2017;
- the Tenant agreed to pay monthly rent of \$1,500.00 by the first day of each month;
- on July 13, 2018 the Tenant gave the Landlord written notice that she would be ending the tenancy on August 15, 2018;
- the rental unit was vacated on August 15, 2018; and
- rent of \$750.00 was paid for August of 2018.

The Landlord is seeking \$750.00 in unpaid rent for August of 2018. This claim is based on the Landlord's submission that the Tenant was required to end the tenancy on the last day of the month, as rent was due on the first day of each month.

The Tenant stated that the Landlord agreed the Tenant only had to pay \$750.00 in rent for August of 2018. In support of her submission that she only had to pay rent of \$750.00 for August of 2018, the Tenant submitted an email in which the Agent for the Landlord declared, in part, that the Landlord would "electronically collect ½ months rent as you are vacating on the 15<sup>th</sup> of August".

The Agent for the Landlord stated that the Landlord did not agree that the Tenant would only have to pay \$750.00 in rent for August of 2018. She stated that the email sent on August 01, 2018 was a confirmation that they would only be collecting \$750.00 in rent electronically as that is the amount the Tenant authorized them to collect for that month. She stated that it was not intended to declare that full rent for August was not due.

The Landlord is seeking compensation, in the amount of \$315.00, for cleaning the rental unit. The Agent for the Landlord stated that the interior of the rental unit required cleaning at the end of the tenancy.

The Agent for the Landlord stated that the rental unit had not been cleaned by the time she attended the rental unit at noon on August 15, 2018. She stated that the parties agreed that the Tenant would clean the unit for another hour. She stated that when she returned to the unit at 1:00 p.m. additional cleaning was still required.

The Tenant stated that the Agent for the Landlord attended the rental unit at noon on August 15, 2018, at which time she still had cleaning to do. She stated that the parties agreed that she would clean the unit for another hour; that she cleaned for another hour; and that when she vacated the unit it was clean.

The Landlord submitted photographs of the rental unit. The Agent for the Landlord stated that all of the photographs submitted were taken after the Tenant had completed cleaning, with the exception of the photograph of the refrigerator.

The Tenant submitted photographs of the rental unit. The Tenant stated that her photographs were taken at 12:45 or 12:50 p.m. on August 15, 2018, after she had completed her cleaning.

The Tenant stated that the Landlord's photographs show the amount of cleaning that was required at noon on August 15, 2018, but they do not accurately reflect the cleanliness of the unit when she vacated the unit around 1:00 p.m. on that date. She stated that her photographs accurately reflect the cleanliness of the unit just prior to vacating the unit.

The Agent for the Landlord stated that all of the Landlord's photographs accurately reflect the condition of the unit after the Tenant vacated the unit, with the exception of the photograph of the refrigerator. She stated that she does not know when the Tenant's photographs were taken, but they do not accurately reflect the cleanliness of the rental unit at the end of this tenancy.

The Landlord is claiming \$390.00 for pressure washing. The Agent for the Landlord stated that there was "silly string" and "sidewalk chalk" on the exterior siding and deck. She stated that these areas needed to be pressure washed as she was unable to clean them.

The Property Manager Coordinator stated that she was also unable to clean those areas.

The Tenant agreed that there was "silly string" and "sidewalk chalk" on the exterior of the rental unit at the end of the tenancy. She stated that these items can be washed off without the need for a power washer.

The Landlord submitted an invoice for \$390.00. This invoice indicates that the Landlord was charged \$227.50 for power washing. I note that this invoice refers to other repairs made at the rental unit. As the Landlord has no claimed compensation for those repairs in this Application for Dispute Resolution, they were not considered at these proceedings.

The Landlord is seeking compensation, in the amount of \$336.00, for repairing and painting. The Agent for the Landlord stated that the entire rental unit was painted at the end of the tenancy. She stated that the Landlord is only seeking compensation for the cost of removing stickers from two bedrooms in the unit, which were applied during the tenancy. The Landlord submitted photographs of the stickers that were applied during the tenancy.

The Tenant stated that she removed all of the stickers from the bedrooms prior to vacating the tenancy. She contends that the photographs of the stickers submitted by the Landlord were taken prior to her finishing her cleaning.

The Tenant stated that she submitted photographs that show the stickers have been removed. The Agent for the Landlord stated that the Tenant's photographs do not show that the stickers have been removed.

The Landlord submitted an invoice which clearly indicates the Landlord was charged \$336.00 for "ceiling repair, remove stickers".

The Tenant argued that the claim for repairing the bedroom should be denied because at least two of the bedrooms needed painting at the start of her tenancy. The Agent for the Landlord agreed that the walls in two of the bedrooms had damage at the start of the tenancy and that one of the bedrooms needed painting at the start of the tenancy.

### Analysis

Section 45(1) of the *Residential Tenancy Act (Act)* permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and 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.

On the basis of the undisputed evidence I find that rent for this tenancy was due on the first day of each month. I therefore find that the Tenant did not have the right, pursuant to section 45(1) of the *Act*, to end the tenancy on the fifteenth day of the month.

On the basis of the undisputed evidence I find that on July 13, 2018 the Tenant gave the Landlord notice of her intent to vacate the unit, effective August 18, 2019.

Section 53 of the *Act* stipulates, in part, that if a tenant gives notice to end a tenancy with an effective date that is earlier than the earliest date permitted under the *Act*, the effective date is deemed to be the earliest date that complies with the section. As the Tenant did not have the right to end the tenancy on the fifteenth day of the month, I find that the corrected date of the notice to end tenancy she served to the Landlord on July 13, 2018 was August 31, 2018.

As the Tenant did not have the right to end the tenancy prior to August 31, 2018, I find that she was obligated to pay all of the rent that was due on August 01, 2018, which was \$1,500.00. As the Tenant only paid \$750.00 in rent for August of 2018, I find that she still owes the Landlord \$750.00 in rent for that month.

When one party submits that there has been a change to a term of the tenancy agreement the burden of proving that both parties agreed to the change rests with the party who is attempting to rely on the amended term. In these circumstances the Tenant bears the burden of proving that the Landlord agreed to reduce rent for August of 2018. I find that the Tenant submitted insufficient evidence to establish that the Landlord agreed to reduce the rent for August of 2018.

In determining that there was insufficient evidence to establish that the Landlord agreed to reduce the rent for August of 2018, I was heavily influenced by the Agent for the Landlord's testimony that the Landlord did not agree to the rent reduction. I find that the email of August 01, 2018 is not sufficient to corroborate the Tenant's claim regarding the rent reduction. I find that the Agent for the Landlord's explanation that the email was simply a confirmation that the Landlord would only be collecting \$750.00 in rent electronically because that is the amount the Tenant authorized them to collect for that month is plausible and, therefore, is not proof that the Landlord agreed to a rent reduction

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or

loss was the result of a breach of the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires a tenant to leave a rental unit in reasonably clean condition at the end of a tenancy.

On the basis of the testimony of the Agent for the Landlord, I find that the photographs submitted in evidence by the Landlord reflect the cleanliness of the rental unit at the end of the tenancy, with the exception of the photograph of the refrigerator. As the Landlord acknowledged that the photograph of the refrigerator was taken before the Tenant had finished cleaning, that photograph has not been considered during this adjudication.

On the basis of the testimony of the Tenant, I find that the photographs submitted in evidence by the Tenant also reflect the cleanliness of the rental unit at the end of the tenancy.

When a landlord takes photographs of a unit at the end of a tenancy a landlord typically focuses on areas that are damaged or in need of cleaning. When a tenant takes photographs of a unit at the end of a tenancy a tenant typically focuses on areas that are clean or undamaged. As the photographs submitted by the two parties are mostly of different areas in the unit, I find that the photographs submitted by the parties can both be accurate reflections of those areas of the unit.

It appears that both parties have submitted a photograph of the same bathroom sink, which are somewhat different. As the photograph submitted by the Tenant shows this area was clean and the photograph submitted by the Landlord shows an object on the counter, I find it reasonable to believe that the photograph submitted by the Tenant was taken later. I therefore did not consider the Landlord's photograph of this area during this adjudication.

I have viewed all of the photographs and I find that the Landlord has failed to establish that the Tenant breached section 37 of the *Act*. Although the Landlord's photographs establish that some areas needed additional wiping, I find that they do not establish that the rental unit was not left in reasonably clean condition, which is the standard required by section 37 of the *Act*. Section 37 of the *Act* does not require a tenant to leave a unit in pristine condition. As the Landlord has failed to establish that the interior of the unit was not left in reasonably clean condition, I dismiss the Landlord's claim for cleaning.

On the basis of the undisputed evidence I find that the Tenant breached section 37 of the *Act* when she failed to remove “silly string” and “sidewalk chalk” from the exterior of the rental unit. I therefore find that the Landlord is entitled to compensation for power washing, in the amount of \$227.50.

In adjudicating the claim for power washing I have placed little weight on the Tenant’s submission that “silly string” and “sidewalk chalk” can be washed without the need for power washing. I find that the testimony of the Agent for the Landlord and the Property Manager Coordinator, both of whom unsuccessfully attempted to clean the products, is more compelling than the Tenant’s testimony that these substances are washable. Even if these substances are typically washable, I find it entirely possible that they could not be removed from these surfaces.

I favour the testimony of the Agent for the Landlord, who testified that stickers in two bedrooms had not been removed at the end of the tenancy, over the testimony of the Tenant, who stated that the stickers had been removed at the end of the testimony. In reaching this conclusion I was heavily influenced by the invoice submitted by the Landlord, which shows that the Landlord was charged \$336.00 for “ceiling repair, remove stickers”. I find that this invoice clearly corroborates the Agent for the Landlord’s testimony and refutes the Tenant’s testimony.

In adjudicating the claim for removing the stickers I have placed no weight on the photographs submitted by the Tenant, as they do not appear to show the areas of the bedrooms where stickers were attached.

I find that the Tenant failed to comply with section 37 of the *Act* when she did not remove the stickers from the walls/ceiling at the end of the tenancy and I therefore find that she must pay the Landlord the \$336.00 the Landlord paid to have them removed.

In adjudicating the claim for removing the stickers I have placed no weight on the Tenant’s submission that two bedrooms required painting at the start of her tenancy. I have placed no weight on this submission as the invoice clearly indicates the \$336.00 was for removing the stickers and repairing the ceiling. As the invoice indicates there was an additional charge for painting, I find that the claim of \$336.00 does not include a claim for painting. I therefore find it is not relevant that painting was required at the start of the tenancy, as the stickers would need to be removed and any resulting damage repaired prior to painting the rooms.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,413.50, which includes \$750.00 in unpaid rent, \$227.50 for power washing; \$336.00 for removing stickers; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the balance \$1,413.50. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: May 12, 2019

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Residential Tenancy Branch