



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARPEIT LIMITED  
PARTNERSHI P CARPEIT LIMITED PARTERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

**MNDCT MNSD**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38.

PD attended the hearing on behalf of the landlord ("the landlord". The tenant attended. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The respondent acknowledged receipt of the applicant's Notice of Hearing and evidentiary materials. No issues of service were raised. I find the respondent was served in accordance with section 89 of the *Act*.

The landlord requested the name of the landlord to be corrected as it was misspelled in the documents. Accordingly, the landlord's name is corrected.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38.

Background and Evidence

The parties agreed upon the following. The tenant and his spouse entered into a tenancy agreement with the landlord beginning October 1, 2017 for a fixed one-year term for a 2-bedroom unit where they resided with their three children. Rent was \$2,390.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant and his spouse paid the landlord a security deposit of \$1,195.00. The tenant claimed he paid the security deposit and the rent to the landlord throughout the tenancy although he submitted no documentary evidence in this regard.

The tenant submitted a copy of a portion of the tenancy agreement as evidence.

The tenant's spouse CM was not present or represented at the hearing.

The parties agreed that on January 18, 2018, the tenant's spouse obtained a Protection Order from the Provincial Court of British Columbia ("the Order"). The Order provided that any police officer with a copy of the Order was directed to remove the tenant from the unit. The Order contained a term that it will expire on January 30, 2018.

The landlord submitted a copy of the Order along with the supporting materials for the court application which included a request by the tenant's wife that the tenant be required to "vacate [the] apartment" and "remove [his] name from lease".

The landlord testified that the tenant's spouse presented a copy of the Order to the landlord on January 18, 2018. She instructed the landlord that the tenant's name be immediately removed from the lease and henceforth she alone would rent the unit. The

tenant's wife also instructed the landlord to change the locks to the unit and to deny the tenant access.

The landlord testified that the tenant's wife informed the landlord that she would be paying the rent henceforth from a different bank account registered in her name only; the landlord testified that all subsequent rent payments were made from this account.

At the tenant's spouse's instructions and upon presentation of the Order, the landlord testified he accepted the termination of the tenancy effective immediately, entered into a new tenancy agreement with her, and transferred the security deposit of \$1,195.00 to the new agreement.

The tenant testified he went to the landlord on January 30, 2018 and informed the landlord that the Order had expired, and no subsequent or similar order was in effect from that date onward. The tenant requested access to the unit that day. The landlord denied the tenant access.

The landlord testified the landlord informed the tenant that he would be reinstated to the lease upon his wife's request to do so providing that the request was accompanied by a court document indicating that neither the Order (or a subsequent or similar order) was in effect. The landlord testified, as acknowledged by the tenant, that the tenant's wife did not make such a request or submit any such document to the landlord from January 18, 2018 until she vacated the unit on July 31, 2018.

For the remainder of the time the tenant's spouse lived in the unit, the tenant was denied access by the landlord and by his spouse. The tenant testified that the exception was a brief period of attempted reconciliation when the tenant's spouse allowed him to temporarily reside in the unit in April 2018.

The tenant's spouse vacated the unit on July 31, 2018 and the landlord returned the security deposit to her at her instructions.

The tenant claimed that the landlord's denial of access by him to the unit following January 30, 2018 was unlawful. Because of the landlord's unlawful actions, the tenant claimed he incurred substantial expenses for temporary accommodation and rental of a new unit, expenses totalling \$14,868.00. The tenant provided a monetary order worksheet listing the claims; he provided receipts and banking records in support of his claim for the expenses.

The landlord denied the landlord is responsible for any of the tenant's claims.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the tenant to prove the tenant is entitled a claim for a monetary award.

*Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants* clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement, as follows, in part:

*Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.*

...

*Where co-tenants have entered into a fixed term lease agreement...If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, **the first lease agreement is no longer in effect.***

**[My emphasis added]**

In this matter, I refer to the evidence submitted by the parties. I find that the tenant's spouse was one of the two co-tenants named on the written tenancy agreement; therefore, the tenant's spouse was a named party to the tenancy agreement and was entitled to end the tenancy on behalf of both the tenants.

Based on the testimony of the landlord, I find the tenant's spouse presented the landlord with a copy of the Order and instructed the landlord to end the tenancy. I find the landlord accepted the instructions. I note that it is at the liberty and discretion of the landlord if they choose to accept a tenant's notice to end a tenancy and mutually agree to an end of tenancy date earlier than that provided by the tenancy agreement.

I find that the landlord and the tenant's spouse then entered into a new agreement effective January 19, 2018, with only the landlord and the tenant's spouse as named parties.

Therefore, in accordance with the *Policy Guideline 13* noted above, I find that the original tenancy agreement was no longer in effect as of January 18, 2018 and as such, the tenant had no entitlement to the use or possession of the rental unit as of that date as the use and possession was granted exclusively to the tenant's spouse pursuant to the new tenancy agreement.

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security and/or pet damage deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing

Section 38(4) of the *Act* allows a landlord to retain an amount from a security and/or pet damage deposit if the tenant agrees in writing.

The Guideline provides that a security deposit is paid in respect of an individual tenancy agreement; regardless of who paid the deposit, any tenant who is a party to the agreement to which the deposit applies, may instruct the landlord with respect thereto.

The Guideline states as follows:

*A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. **Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages or may apply for arbitration for return of the deposit.***

**[My emphasis added]**

Based on the evidence of the landlord and in consideration of the Guideline, I find that the tenant's wife was "party to the tenancy agreement" who gave proper and lawful instructions to the landlord to transfer the security deposit to the new agreement. I find the landlord held the security deposit under the terms of the new agreement until the end of the new tenancy at which time the landlord returned the security deposit to the tenant's wife pursuant to the *Act*.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord addressed the security deposit in accordance with section 38 of the *Act*. Hence, the tenant's application with respect to the return of the security deposit is dismissed without leave to reapply.

In conclusion, having reviewed the *Act* and considering the evidence of the parties, I find the tenant has failed to meet the burden of proof on a balance of probabilities that the damage or loss claimed by the tenant resulted from a violation by the landlord of the *Act*, regulations, or tenancy agreement.

I therefore dismiss the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: June 3, 2019

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Residential Tenancy Branch