



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **FFL MNDCL-S MNDL-S (landlord); FFT MNDCT MNSD (tenant)**

### Introduction

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

This hearing also dealt with an application by the tenants 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;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The agents VP, LT and NT attended on behalf of the landlord (“the landlord”); the tenant PG attended on behalf of both tenants (“the tenant”).

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

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;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

The parties agreed the tenancy began on August 1, 2016 for rent of \$1,230.00 and ended on April 30, 2019; the tenant provided a security deposit of \$615.00 and a pet deposit of \$615.00 (together \$1,230.00 and referred to as the 'security deposit'). The tenant also provided a \$150.00 deposit for the unit's fob for a total deposit of \$1,380.00.

The parties agreed the unit was new when the tenancy began and that a condition inspection on moving out noted that some cleaning was required in the unit and the

bathtub was scratched. A copy of the report as signed by both parties was submitted as evidence.

The landlord testified that the following cleaning, noted on the condition inspection report as being necessary, was carried out by cleaners hired by the landlord: appliances cleaned, baseboards damp wiped, closet cleaned, and washer/dryer cleaned. The landlord submitted photographs in support of this claim. As well, the agent LT stated that she had personally inspected the unit and observed that this cleaning needed to be done before another occupant moved in.

The landlord stated that the inspection took place in the afternoon of the last day of the tenancy. The need for cleaning was discovered as mentioned above. The landlord contacted a cleaner who worked overtime that day to get the job done as soon as possible. As a result, the cleaner charged \$45.00 an hour as an overtime rate for a total, including taxes, of \$189.00. A copy of the invoice was submitted as evidence.

The tenant acknowledged that the cleaning done by the landlord's cleaners was necessary and that the landlord incurred this expense. However, the tenant objected to the hourly amount charged by the cleaner as too high and stated that the time was inflated given the small amount of work that was necessary. He also stated that one of the appliances was not on wheels and he was under no obligation to pull the appliance out and clean behind it which had been included in the invoice.

The landlord's second claim related to cost of repairing scratches to the bathtub. The landlord submitted an invoice in the amount of \$262.50 for this expense.

The tenant explained that from time to time he washed his dog in the bathtub and this resulted in some scratches. The tenant acknowledged that he was responsible for the scratches to the bathtub and that the landlord had incurred this expense.

However, the tenant denied that he is responsible for the cost of repairs. He stated that the unit was advertised as being 'pet friendly', that the landlord should have anticipated that animals would be washed in the bathtub and that the landlord failed to provide a bathtub of sufficient durability for the anticipated use.

The landlord filed this application on May 13, 2019, within 15 days. The landlord returned part of the security deposit of \$765.00 on May 14, 2019. The landlord clarified their claim as follows:

ITEM	AMOUNT
Cleaning	\$189.00
Bathtub repairs	\$262.50
Reimbursement of the filing fee	\$100.00
<b>Landlord's claim</b>	<b>\$551.50</b>

The landlord requested authorization to apply the deposit to the monetary order as follows:

ITEM	AMOUNT
Landlord's claim (above)	\$551.50
(Less deposit)	(\$1,380.00)
<b>Balance of deposit</b>	<b>(\$828.50)</b>

As the landlord returned \$765.00 to the tenant, receipt of which the tenant acknowledged, the landlord's claim of a balance owing the tenant of \$63.50 was summarized as follows:

ITEM	AMOUNT
Balance of deposit owed tenant (above)	\$828.50
(Less returned amount)	(\$765.00)
<b>Balance of deposit owing tenant</b>	<b>\$63.50</b>

### 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* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

Reference to each of the landlord's claims follows.

### *Cleaning*

I have considered all the evidence submitted by the landlord, including the testimony, the receipt for the cleaning, the photographs showing the unit needed cleaning as claimed, and the condition inspection report on moving in and moving out in which the tenant agreed the unit needed certain areas cleaned.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, and the landlord incurred \$189.00 in cleaning expenses.

However, I accept the tenant's assertion that the cost of the cleaning is out of proportion to the job that needed to be done by the tenant and the hourly rate is excessive in the circumstances. I find a reasonable compensation for the landlord is \$125.00 and I accordingly grant the landlord a monetary order in this amount.

#### *Bathtub repairs*

I have considered all the evidence submitted by the landlord, including the testimony, the receipt for the repairs, the photographs showing the scratches, and the condition inspection report on moving in and moving out in which the tenant agreed the bathtub was scratched. I have also considered the tenant's acknowledgement that the tenant is responsible for the scratches from washing his dog.

I find the tenant's assumption that the bathtub could be used for cleaning animals to be unreasonable and I do not accept the tenant's assertion that the scratches indicate the bathtub was not of suitable quality. I find the landlord has met the burden of proof on a balance of probabilities that the landlord is entitled to compensation in the amount claimed.

I therefore allow the landlord's claim for compensation for repairs in the amount of \$262.50 and grant the landlord a monetary order in this amount.

#### *Filing fee*

As the landlord is successful in this claim, I award the landlord \$100.00 reimbursement of the filing fee.

#### *Summary*

The award is summarized as follows:

ITEM	AMOUNT
Cleaning	\$125.00
Bathtub repairs	\$262.50
Reimbursement of the filing fee	\$100.00
<b>Monetary Award in Favour of Landlord</b>	<b>\$487.50</b>

I grant the landlord authorization to deduct the award of **\$487.50** from the deposit as follows:

ITEM	AMOUNT
Landlord's award (above)	\$487.50
(Less deposit)	(\$1,380.00)
<b>Balance of deposit</b>	<b>(\$892.50)</b>

As the landlord has already returned a portion of the deposit, I order the landlord to return the balance of the deposit as follows:

ITEM	AMOUNT
Balance of deposit owing tenant	\$892.50
(Less returned amount)	(\$765.00)
<b>Balance of deposit owing tenant</b>	<b>\$127.50</b>

I direct the landlord to return the balance of the deposit in the amount of \$127.50.

Conclusion

The landlord is granted a monetary order in the amount of **\$487.50** which I direct to be paid from the deposit held by the landlord. I direct that the landlord returns to the tenant the balance of the deposit of **\$127.50** within 10 days of the date of this order. I grant the tenant a monetary order in the amount of \$127.50 in this regard which may be filed in the Supreme Court of British Columbia, Small Claims Division, 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 *Residential Tenancy Act*.

Dated: August 20, 2019

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Residential Tenancy Branch