



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CALEDONIA REALTY LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S, MNRL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 28, 2019 (the "Application"). The Landlord sought:

- Compensation for damage to the rental unit;
- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant did not appear. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package and evidence were sent by registered mail on July 08, 2019 to the Tenant's new residence. The Agent testified that he obtained the Tenant's new address by following her and her movers to her new residence on June 30, 2019.

The Landlord submitted the customer receipt for the package with Tracking Number 1 on it. I looked this up on the Canada Post website which shows notice cards were left July 09, 2019 and July 15, 2019. It shows the package was unclaimed and returned to the sender July 25, 2019.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I find the Tenant was served in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). I also find the Landlord complied with rule 3.1 of the Rules of Procedure. The Tenant is deemed to have received the package July 13, 2019 pursuant to section 90(a) of the *Act*.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlord sought the following compensation:

1	Repairs and cleaning	\$500.33
2	June rent	\$775.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,375.33</b>

A written tenancy agreement was submitted as evidence. The tenancy started March 29, 2019 and was a month-to-month tenancy. Rent was \$775.00 per month due on the first day of each month. The Tenant paid a \$387.50.00 security deposit. The agreement was signed by the Tenant and for the Landlord.

The Agent testified as follows.

The Tenant was issued multiple 10 Day Notices during the tenancy. In mid June, the Tenant called the office and said she was moving out. The Tenant moved her belongings out of the rental unit June 30, 2019. The tenancy ended July 01, 2019.

The Tenant did not provide the Landlord with her forwarding address.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The parties did a move-in inspection March 29, 2019. The unit was empty. A Condition Inspection Report was completed and signed by both parties. A copy was put in the Tenant's mailbox within a couple days of the inspection.

The Landlord did a move-out inspection July 01, 2019. The Tenant had vacated but left belongings behind. The Landlord completed the Condition Inspection Report. A copy was provided to the Tenant in the evidence package.

The Tenant did not participate in the move-out inspection. The Landlord provided the Tenant more than two opportunities to do the inspection. The Landlord posted a Notice of Final Opportunity to Schedule a Condition Inspection on the rental unit door June 30, 2019. The Tenant did not show up for the inspection.

The Tenant never paid June rent. The Tenant did not have authority under the *Act* to withhold rent.

The Tenant left a mess in the rental unit upon move-out. Cleaners were hired to clean up the mess prior to the next tenant moving in. It took seven hours to clean the unit.

Repairs were needed to the rental unit upon move-out. The same company that cleaned did the repairs. The towel bar and smoke detector had to be fixed.

The Agent relied on the Condition Inspection Report, photos and invoice for the cleaning and repairs to support the claim.

The Landlord submitted an email from the Tenant stating she will move out by July 01, 2019.

### Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 38 of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 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,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the undisputed testimony of the Agent that the Tenant has not provided the Landlord with a forwarding address in writing. Therefore, section 38(1) of the *Act* has not yet been triggered.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Based on the undisputed testimony of the Agent and written tenancy agreement, I accept that the Tenant was required to pay \$775.00 in rent each month by the first day of each month during the tenancy. Based on the undisputed testimony of the Agent and documentary evidence noted above, I accept that the Tenant did not vacate the rental unit until June 30, 2019. Based on the undisputed testimony of the Agent, I accept that the Tenant did not pay June rent. Based on the undisputed testimony of the Agent, I accept that the Tenant did not have authority under the *Act* to withhold rent. The Landlord is entitled to June rent and I award the Landlord the compensation sought.

Section 37(2) of the *Act* states:

(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...

Based on the undisputed testimony of the Agent, Condition Inspection Report and photos of the rental unit, I accept that the Tenant left belongings in the rental unit and left the rental unit dirty. I find the Tenant breached section 37(2) of the *Act*. Based on the photos, I accept that the Landlord had to hire a company to attend and clean the rental unit prior to the next tenant moving in. Based on the photos and invoice, I accept that the cleaning took seven hours. Based on the invoice, I accept that the cleaning cost \$30.00 per hour for a total of \$210.00. Based on the invoice, I also accept that cleaning materials cost \$41.50 and garbage disposal cost \$100.00. I find these amounts reasonable, particularly given the state of the rental unit as shown in the photos.

Based on the undisputed testimony of the Agent, Condition Inspection Report and photos of the rental unit, I accept that the Tenant caused damage to a towel bar and cupboard door. I accept this damage was beyond reasonable wear and tear. I find the Tenant breached section 37(2) of the *Act*.

Based on the undisputed testimony of the Agent and invoice, I also accept that the smoke detector needed a new battery. I accept that the Tenant is responsible for this cost.

Given the nature of the damage, I accept that the Landlord had to repair the damage and replace the smoke detector battery. Based on the invoice, I accept this took 2.5 hours at \$50.00 per hour for a total of \$125.00. I accept that this amount is reasonable and note that the Tenant did not appear at the hearing to dispute the claims.

Based on the invoice, I find the total cost of cleaning and repairs was \$500.33 with tax. The Landlord is entitled to recover this amount.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following:

1	Repairs and cleaning	\$500.33
2	June rent	\$775.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,375.33</b>

The Landlord can keep the security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for the remaining \$987.83 owed.

### Conclusion

The Landlord is entitled to compensation in the amount of \$1,375.33. The Landlord can keep the security deposit. The Landlord is issued a monetary order for the remaining \$987.83 owed. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial 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: October 10, 2019

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Residential Tenancy Branch