



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

Two landlord's agents and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary Issue

The evidence was discussed. The tenant confirmed receiving the landlord's evidence and she also confirmed not providing her documentary and audio evidence to the landlord.

As the Rules require that each party submitting evidence provides the exact same evidence to both the Residential Tenancy Branch ("RTB") and the other party, I have declined to accept the tenant's evidence.

The tenant, however, was informed she could provide her testimony which was contained in her documentary evidence.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee?

### Background and Evidence

The written tenancy agreement submitted by the landlord shows that this one-year, fixed term tenancy began on November 21, 2018, was to run through November 30, 2019, monthly rent was \$1,475.00, and the tenant paid a security deposit of \$737.50.

The landlord's agent, DS, confirmed they have retained the tenant's security deposit, having made this claim against it.

The landlord's original monetary claim was as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Suite cleaning, 3 hours	\$90.00
2. Hood fan clean, excessive grease	\$30.00
3. Carpet cleaning	\$80.00
4. Drapery cleaning	\$42.00
5. Liquidated damages	\$450.00
6. July 2019, rent	\$1,475.00
7. Balance of rent to end of fixed term	\$5,900.00
8. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$8,167.00</b>

The landlord's agent said that they were no longer seeking the amount of \$5,900.00 for rent to the end of the fixed term, as the rental unit was successfully re-rented on August 1, 2019. The landlord's agent submitted that their monetary claim is now \$2,267.00.

As a result, I have excluded the amount of \$5,900.00 from the landlord's monetary claim.

In support of their application, the landlord's agent, DS, (landlord) submitted the following:

*July 2019 rent-*

The landlord testified that the tenant originally told the landlord she was vacating the rental unit in June 2019; however, she remained in the rental unit until July 3, 2019, at which time the parties conducted the move-out inspection.

The landlord submitted that as the tenant failed to pay rent for July 2019 and did not vacate the rental unit until July 3, 2019, the landlord is entitled to the monthly rent of \$1,475.00 owed under the tenancy agreement.

*Liquidated damages-*

The landlord submitted that the tenant owes the amount of \$450.00 as liquidated damages due under clause 2.10(b) of the written tenancy agreement, as she vacated the rental unit prior to the end of the fixed term.

The landlord explained that the liquidated damages portion of the tenancy agreement is intended to pay for administrative costs incurred in securing a new tenant, such as advertising, showings, answering phone calls and emails, and verifying references.

*Suite cleaning, hood fan cleaning, carpet and drapery cleaning-*

The landlord submitted that they are seeking these costs as the tenant failed to properly clean the rental unit, with excessive grease on the hood fan and very little cleaning otherwise by the tenant. The landlord submitted that they allow for some cleaning at the end of the tenancy, but in this case, the rental unit required extra cleaning.

Additionally, the landlord submitted that the tenant was required by the written tenancy agreement to professionally clean the carpet and drapes at the end of the tenancy, but she did not.

The landlord's additional relevant evidence submitted prior to the hearing included the condition inspection report ("CIR"), both move-in and move-out, receipts and invoices for the expenses claimed, a monetary order worksheet, and photographs of the condition of the rental unit at the end of the tenancy.

*Tenant's response-*

The tenant testified that she felt forced to end the tenancy due to the constant construction noise, including drilling, from 8:30 a.m. to 4 p.m. every day, which greatly impacted her ability to study. The tenant said she needed a quiet place to study, and when she complained to the landlord, she was told to go to a neighbourhood library every day.

The tenant submitted that not having access to her home for quiet study time also impacted her health, as her health conditions required her to be in her own home, and despite the many complaints for three months, the landlord did nothing.

The tenant also submitted that she protected her home and there was no damage or cleaning that was needed.

*Landlord's rebuttal-*

The landlord submitted that the tenant, along with any other tenant who was impacted by the noise, was offered an empty suite to use during the day, which included WIFI.

The landlord submitted further that they had no choice but to repair and renovate other units in the residential property.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

*July 2019 rent-*

Under the written tenancy agreement signed by the parties, the tenant owed the monthly rent on July 1, 2019, as she had not yet vacated by that date. I also find the undisputed evidence is that the tenant failed to pay the monthly rent owed.

I therefore find the landlord is entitled to a monetary award of \$1,475.00.

*Liquidated damages-*

While the tenant asserted she was entitled to end the tenancy early and without penalty because the landlord failed to correct or address the issues with the daily noise levels, I find she was not.

Section 45(3) of the Act permits a tenant to end a tenancy early where the landlord has not rectified a breach of a material term. Section 28 of the Act states that a tenant is entitled to quiet enjoyment.

The tenant's remedy under the Act if the rental unit was not suitable for occupation or if she was being deprived of her rights to quiet enjoyment was to provide the landlord with notice pursuant for breach of a material term or breach of section 28 and provide the landlord with a reasonable period to correct the breach.

Additional remedies were available to the tenant under section 67 of the Act for a landlord's breach of the Act, regulations or tenancy agreement, but a tenant is not entitled to individually terminate the tenancy.

I find the undisputed evidence is that tenant did not provide any such notice and instead breached the terms of her fixed term tenancy by leaving earlier than the end of the fixed term.

For these reasons, I find the tenant is obligated to pay the liquidated damages portion of the signed, written tenancy agreement and I grant the landlord a monetary award of \$450.00, as claimed.

*Suite cleaning, hood fan cleaning, carpet and drapery cleaning-*

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In this case, I find the tenant was obligated by the terms of the written tenancy agreement to professionally clean the carpet and drapes at the end of the tenancy, no matter the length of the tenancy.

I therefore find the landlord is entitled to a monetary award of \$80.00 for carpet cleaning and \$42.00 for drapery cleaning.

As to the landlord's claim for suite and hood fan cleaning, I have reviewed the landlord's photographic evidence. While I acknowledge a small, empty plastic bag in the closet and a few small bits of debris in the top of the refrigerator door, underneath the freezer door, overall, I was left with the impression that the tenant left the rental unit reasonably clean.

I therefore dismiss their monetary claim of \$90.00 for suite cleaning and \$30.00 for hood fan cleaning.

I grant the landlord recovery of their filing fee of \$100.00, due to their successful application and pursuant to section 72(1) of the Act.

For the reasons given above, I find the landlord is entitled to and I grant a total monetary award of \$2,147.00, comprised of unpaid rent for July 2019 of \$1,475.00, liquidated damages for \$450.00, carpet cleaning of \$80.00, drapery cleaning of \$42.00 and their filing fee of \$100.00 paid for this application.

At the landlord's request, I allow them to retain the tenant's security deposit of \$737.50 in partial satisfaction of their monetary award of \$2,147.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,409.50.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$737.50 and they have been awarded a monetary order for the balance due, in the amount of \$1,409.50.

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: October 23, 2019

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Residential Tenancy Branch