



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLYVAN PACIFIC PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, 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 September 19, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit, to recover unpaid rent, to keep the security deposit and for 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 to the Tenant's PO box on September 24, 2019. The Agent testified that the Landlord received the Tenant's PO box at the time the tenancy agreement was signed. The Agent testified that the PO box does not change when people move. The Agent provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was delivered and signed for October 01, 2019. The signatory name is a S.K. The Agent did not know who this is.

Based on the undisputed testimony of the Agent and Canada Post website information, I am satisfied pursuant to section 71(2) of the *Residential Tenancy Act* (the "Act") that the Tenant was sufficiently served with the hearing package and evidence. I find this given the Canada Post website shows the package was delivered and signed for. Given the package was delivered and signed for October 01, 2019, I find it was served in enough time to allow the Tenant to prepare for, and appear at, the hearing.

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 and make relevant submissions. 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 recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Rent for August 2019	\$685.00
2	Cleaning costs	\$200.00
3	Damages/repairs	\$300.00
	<b>TOTAL</b>	<b>\$1,185.00</b>

A written tenancy agreement was submitted as evidence. It includes a different landlord name. The Agent testified that the Landlord changed their name in April of 2019 and the Tenant was aware of this. The tenancy started January 01, 2019 and was a month-to-month tenancy. Rent was \$685.00 due on or before the first day of each month. The Tenant paid a \$342.50 security deposit. The agreement was signed by the Tenant and for the Landlord.

The Agent testified as follows.

The Tenant vacated the rental unit August 31, 2019. The Tenant never provided a forwarding address in writing.

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 January 04, 2019. The unit was empty at the time. A Condition Inspection Report (CIR) was completed and signed by both parties. A copy of the CIR was sent to the Tenant by email within seven days of the inspection.

The parties did a move-out inspection August 31, 2019. The unit was empty at the time. A Condition Inspection Report (CIR) was completed and signed by both parties. A copy of the CIR was sent to the Tenant by email within seven days of the inspection. It was also sent in the evidence package.

The Tenant did not pay August rent. The Tenant did not have authority under the *Act* to withhold rent. A statement of account has been submitted.

The floor, stove and yard had to be cleaned on move-out. There were cigarette butts and garbage in the yard. The bedroom walls had to be washed. The Tenant initialed the CIR where it states that the floor and stove were not cleaned. The cleaner spent eight hours cleaning. The Landlord is seeking \$200.00 for cleaning at \$25.00 per hour. An invoice from the cleaner has been submitted.

The Tenant had a fight with her boyfriend in the rental unit. This resulted in damage to the closet, wall, blinds and screen. The CIR also shows damage to the countertop which was initialled by the Tenant. The Tenant also initialled the CIR in relation to damage to the closet, wall and screen. The countertop, closet, wall, blinds and screen were fine on move-in. An invoice for the work completed has been submitted. The Agent has estimated \$300.00 for the damages mentioned as the repair person completed further repairs for damage the Agent acknowledges was reasonable wear and tear.

The Landlord submitted the following. An invoice from K.G. for the repairs and cleaning. Photos of the screen, blind, closet and wall. The CIR. A Statement showing amounts paid and owing for the Tenant.

## Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Agent and CIR, I accept that the Tenant participated in the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment relates to claims for damage and the Landlord has claimed for unpaid rent.

Based on the undisputed testimony of the Agent and CIR, I accept that the tenancy ended August 31, 2019. Based on the undisputed testimony of the Agent, I accept that the Tenant has not provided the Landlord a forwarding address in writing. Therefore, section 38(1) of the *Act* has not been triggered. Further, I find the Landlord has complied with section 38(1) of the *Act* by claiming against the security deposit prior to receiving the Tenant's forwarding address.

In relation to unpaid rent, section 26(1) of the *Act* requires a tenant to pay rent when it is due under 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 \$685.00 in rent each month by the first day of each month. I have accepted that the tenancy ended August 31, 2019. I find the Tenant resided in the rental unit for August and was required to pay rent for August. Based on the undisputed testimony of the Agent and Statement, I accept that the Tenant did not pay August rent. Based on the undisputed testimony of the Agent, I accept that the Tenant did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenant did. I am satisfied the Landlord is entitled to recover unpaid rent for August of 2019.

In relation to the cleaning and repairs costs, section 37 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...

Policy Guideline 1 deals with reasonable wear and tear and states:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the undisputed testimony of the Agent, invoice of K.G. and CIR, I accept that the stove, walls, floors and yard had to be cleaned on move-out. I accept that the Tenant breached section 37 of the *Act* by not cleaning these areas.

Based on the invoice of K.G., I accept that K.G. spent eight hours cleaning the rental unit. I also accept that the cleaning cost \$200.00 based on the invoice. However, I am not satisfied based on the evidence that eight hours of cleaning for the issues mentioned is reasonable. I award the Landlord \$100.00 for cleaning on the basis of four hours of cleaning at \$25.00 per hour. I am satisfied this is reasonable given the areas that needed cleaning upon move-out.

In relation to the damage, I accept that the Tenant is responsible for damage to the closet, wall, blinds, screen and countertop based on the undisputed testimony of the Agent, photos and CIR. Based on the photos and undisputed testimony of the Agent, I accept that the damage was beyond reasonable wear and tear. I accept that the Tenant breached section 37 of the *Act* in relation to the damage.

Based on the undisputed testimony of the Agent, photos and CIR, I accept that the damage reduced the value of the rental unit and that the Landlord had to repair the damage. Based on the invoice of K.G., I accept that K.G. did repairs in relation to the closet, wall, blinds and countertop. Based on the invoice of K.G., I accept that the total for repairs was \$352.15. I accept that \$300.00 of this for the repairs noted is reasonable, in part due to the extent of the damage to the closet and wall. I award the Landlord the amount sought.

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Rent for August 2019	\$685.00
2	Cleaning costs	\$100.00
3	Damages/repairs	\$300.00
	<b>TOTAL</b>	<b>\$1,085.00</b>

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

In total, the Landlord is entitled to \$1,185.00. The Landlord can keep the \$342.50 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$842.50 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,185.00. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$842.50. This Order must be served on the Tenant as soon as possible. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: January 22, 2020

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Residential Tenancy Branch