



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, OPM, FFL**

### **Introduction**

This hearing was scheduled to deal with a landlord's application for an Order of Possession based on a Mutual Agreement to End a Tenancy; for a Monetary Order for damage to the residential property; and, authorization to retain the tenant's security deposit.

The landlord was represented for the hearing; however, there was no appearance on part of the tenant.

The landlord's agents testified the Notice of Dispute Resolution Proceeding, other required hearing documents, and the landlord's evidence was sent to the tenant via registered mail on October 14, 2020 using the rental unit address since the tenant continues to reside in the rental unit. The landlord provided a copy of the registered mail receipt, including mailing address and tracking number, as proof of service. The landlord's agent stated the registered mail was returned as being unclaimed.

Pursuant to section 90 of the Act, I find the tenant is deemed to have been served with the landlord's proceeding package five days after mailing and I continued to hear from the landlord's agents without the tenant present.

### **Issue(s) to be Decided**

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for damage caused to the property by the tenant or persons permitted on the property by the tenant?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Award of the filing fee.

### Background and Evidence

The parties entered into a tenancy agreement starting September 1, 2015 on a month to month basis. The tenant paid a security deposit of \$367.00. The monthly rent is subsidized and the tenant's most recent monthly rent contribution was set at \$320.00 payable on or before the first of every month.

On March 19, 2020 the tenant's guest was observed damaging the elevator in the building. This was witnessed by the landlord's building maintenance worker and the landlord's security guard. The incident was also captured on video. The damage cost the landlord \$2599.80 to repair. The landlord provided copies of the repair invoice and reports of the building maintenance worker and security guard as evidence.

The landlord's agent testified that the tenant initially denied responsibility for the damage caused to the elevator; however, the tenant later accepted responsibility and attempted to pay the landlord for the damage, in cash. The landlord has a policy not to accept cash so the cash was rejected and the tenant put the cash back in his wallet.

The landlord seeks authorization to retain the security deposit in partial satisfaction of damage to the elevator and obtain a Monetary Order for the balance owing.

On September 9, 2020 the tenant and the landlord's agent executed a Mutual Agreement to End a Tenancy with an effective date of September 30, 2020. The tenant has not yet vacated the rental unit and the landlord seeks an Order of Possession. The landlord provided a copy of the executed Mutual Agreement as evidence.

The landlord's agent acknowledged that monies have been accepted for use and occupancy only for the months after September 2020, including December 2020. The landlord was agreeable to an Order of Possession effective December 31, 2020.

The landlord also requested recovery of the filing fee in making this Application for Dispute Resolution.

### Analysis

Upon consideration of the unopposed evidence before me, I provide the following findings and reasons.

With respect the landlord's requested for an Order of Possession, section 55(2)(d) provides as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

Upon review of the executed Mutual Agreement to End a Tenancy, I am satisfied the parties mutually agreed, in writing, to end the tenancy effective September 30, 2020. Therefore, I find the landlord entitled to an Order of Possession under section 55(2)(d) of the Act and I grant the landlord's request for an Order of Possession. In recognition the landlord has accepted monies for use and occupancy for the month of December 2020 the Order of Possession is effective at 1:00 p.m. on December 31, 2020.

As for the landlord's monetary claim, section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. I accept the unopposed evidence before me that a person permitted on the property by the tenant caused damage to the building elevator that cost the landlord \$2599.80 to rectify. Therefore, I award the landlord recovery of this amount from the tenant.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the damage awarded, as requested. I further grant the landlord's request to recover the \$100.00 filing fee paid for this Application for Dispute Resolution from the tenant.

In light of the above, I provide the landlord with a Monetary Order in the net amount of \$2232.80 [calculated as \$2599.80 – \$367.00 + \$100.00].

### Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2020.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$2232.80.

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: December 18, 2020

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Residential Tenancy Branch