



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
LIMITED and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 5, 2020, wherein the Landlord requested monetary compensation from the Tenant for unpaid rent, cleaning and repairs to the rental unit, authority to retain their security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on February 25, 2021. Only the Landlord's Property Manager, K.H. called into the hearing (hereinafter referred to as "Landlord"). The Landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:59 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified he served the Tenant with the Notice of Hearing and the Application on November 11, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 16, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

#### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began April 1, 2016. Monthly rent was originally \$1,150.00 and the Tenant paid a \$575.00 security deposit. At the time the tenancy ended rent was payable in the amount of \$1,269.00; the Landlord testified that in addition to rent, the Tenant also paid \$30.00 for parking. The tenancy ended pursuant to a Mutual Agreement on October 31, 2020 (a copy of this agreement was provided in evidence before me).

The Landlord testified that at the time the tenancy ended the Tenant owed \$1,349.00 in unpaid rent, parking fees, late fees and N.S.F. fees.

In the claim before me the Landlord also sought the cost to repair and clean the rental unit. The Landlord testified that the Tenant caused significant and deliberate damage to the rental unit; including but not limited to the following:

- The Tenant put his electric shaver in a frying pan and then put the pan in the oven as high as he could in an attempt to burn the rental unit down. This caused significant damage to the stove as well as smoke damage to the entire unit such that the rental unit required repainting to remove the smell.
- The Tenant then wrapped the fridge in plastic and left it in appalling condition.
- The Tenant also used a car battery to try to set the carpet on fire.
- The Tenant purposely burned the carpet with cigarettes.
- The Tenant then barricaded himself in the suite and was forcefully removed by the police.

The Landlord provided copies of the invoices for the amounts paid to clean and repair the rental unit. The cleaning invoice indicated the condition of the rental unit was so hazardous when the tenancy ended that the cleaners required hazmat suits to enter the unit and attend to required cleaning.

The Landlord filed a Monetary Orders Worksheet at the time of filing the Application. This document was amended on February 11, 2021 and provided to Tenant by registered mail (the tracking number for that package is included on the unpublished cover page of this my Decision). The updated Worksheet removed some of the amounts originally claimed and clarified the Landlord's claim as follows:

Floor replacement	\$5,213.00
Cleaning	\$441.00
Removal of Tenant's items	\$900.00
Repainting of rental unit	\$900.00
Appliance replacement	\$1,194.69
Unpaid rent, parking, late fee and N.S.F. fee	\$1,349.00
<b>TOTAL CLAIMED</b>	<b>\$9,997.69</b>

The Landlord confirmed that just prior to the tenancy beginning the carpets were replaced such that they were new at the start of the tenancy. The Landlord stated that

the Tenant deliberately burned holes in the carpet with cigarettes during the tenancy such that the Landlord had to replace them, even though they were not very old.

In terms of the request for painting costs the Landlord confirmed that the smell from the smoke damage, as well as the Tenant smoking in the rental unit, was so intense that the walls needed to be completely repainted. Further, the Landlord confirmed that due to the Tenant's deliberate actions the stove, rangehood and fridge needed to be replaced.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the *Act* provides that a Tenant must pay rent when rent is due. I accept the Landlord's undisputed testimony and evidence that when the tenancy ended the Tenant was in arrears of his rent payments as well as the payments for his parking. I find the Landlord is entitled to recovery of these sums in addition to recovery of the N.S.F. and late fees claimed.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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, and
  - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlord's testimony and evidence with respect to the condition of the rental unit at the end of the tenancy. I find that the Tenant deliberately damaged the rental unit and did not repair this damage as required by section 37(2)(a) of the *Act*. The evidence before me confirms that the damage caused by the Tenant was extensive. *Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant, Responsibility for Residential Premises* provides that a tenant is required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. I therefore find the Tenant is responsible for compensating the Landlord for the claimed costs to repair and clean the rental unit.

As the Landlord has been successful in this Application, I also award the Landlord recovery of the filing fee.

### Conclusion

The Landlord's request for monetary compensation from the Tenant is granted. The Landlord is entitled to the sum of **\$10,097.69** for the following:

Unpaid rent, parking, late fee and N.S.F. fee	\$1,349.00
Floor replacement	\$5,213.00
Cleaning	\$441.00
Removal of Tenant's items	\$900.00
Repainting of rental unit	\$900.00
Appliance replacement	\$1,194.69
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$10,097.69</b>

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$575.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$9,522.69**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: March 22, 2021

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Residential Tenancy Branch