



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDCL, MNDL-S, FFL

### Introduction

On March 9, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.L. and L.B. attended the hearing as agents for the Landlord; however, the Tenant did not attend the hearing at any point during the 24-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

J.L. advised that the Notice of Hearing package was served to the Tenant by registered mail on March 18, 2021 (the registered mail tracking number is noted on the first page of this Decision). He testified that this package was delivered to the Tenant. Based on this solemnly affirmed testimony, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing package.

He also advised that the Landlord’s evidence was served to the Tenant by registered mail on July 7, 2021 (the registered mail tracking number is also noted on the first page of this Decision). Based on this undisputed evidence, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.L. advised that the tenancy started on February 1, 2020 and it ended when the Tenant gave up vacant possession of the rental unit on February 28, 2021. Rent was established at an amount of \$1,200.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that a move-in inspection was conducted with the Tenant on February 1, 2020 and a move-out inspection was conducted with the Tenant on February 28, 2021. A copy of these reports was submitted as documentary evidence. As well, he noted that the Tenant provided her forwarding address in writing on the Move Out Charge form on February 28, 2021.

He advised that the Landlord is seeking compensation in the amount of **\$1,200.00** because the Tenant was in a month-to-month tenancy and gave written notice in February 2021 to end her tenancy on February 28, 2021. He stated that the Landlord was not able to rent the unit in March 2021 on such short notice. As the Tenant did not provide one, full month's written notice pursuant to the *Act*, the Landlord is seeking compensation for the loss of March 2021 rent. The Tenant's notice to end her tenancy was submitted as documentary evidence.

He advised that the Landlord is seeking compensation in the amount of **\$2,500.00** for the cost of replacing the carpet in the rental unit as the Tenant stained and burned holes in the carpet. He referenced the invoice and pictures submitted as documentary evidence to support this claim.

L.B. advised that the carpet was brand new at the start of the tenancy; however, he did not submit any documentary evidence to support this. He stated that attempts were made to clean the carpet, but the carpet professional informed the Landlord that it was not salvageable. When he was questioned about the age of the carpet and why it appeared to be a pink coloured, dated carpet, he testified that the carpet is actually beige in colour, but the pictures appear different.

Finally, J.L. advised that the Landlord is seeking compensation in the amount of **\$600.00** for the cost of replacing drapes that the Tenant ripped and scratched. He referenced the invoice and pictures submitted as documentary evidence to support this claim.

L.B. advised that the Landlord replaces the drapes frequently and that some of the drapes in the rental unit were approximately one year old, and that others were brand new. Regardless, the Tenant damaged the drapes, requiring them to be replaced for a new tenant.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that both a move-in inspection and a move-out inspection were conducted by the parties. As such, I am satisfied that the Landlord complied with the *Act* and *Regulations* in completing these reports. Therefore, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenant’s deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant’s forwarding address in writing on February 28, 2021. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on March 9, 2021. As the Landlord made this Application within 15 days of receiving the Tenant’s forwarding address in writing, and as the Landlord did not extinguish the right to claim against the deposit still, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claim for lost rent in the amount of \$1,200.00, there is no dispute that the tenancy was a month-to-month tenancy when the Tenant gave her written notice to end the tenancy in February 2021 that was effective for February 28, 2021.

Sections 44 and 45 of the *Act* set out how tenancies end in this instance. The Tenant is required to provide the Landlord with one, whole month’s written notice to end a month-to-month tenancy. Given that the undisputed evidence is that the Tenant did not do so, and that the Landlord was unable to rent the unit for March 2021, I am satisfied that the Landlord is entitled to a monetary award in the amount of **\$1,200.00** to satisfy the loss for rent owing for the month of March 2021.

With respect to the Landlord’s claims for compensation in the amounts of \$2,500.00 for the cost of replacing the carpet and \$600.00 for the cost of replacing the blinds, as the Tenant did not attend the hearing or provide any evidence to the contrary, I rely on the solemnly affirmed testimony of the Landlord’s agents, the pictures submitted of the condition of the rental unit at the end of the tenancy, and the other accompanying documentary evidence.

Regarding the carpet, when reviewing the pictures submitted, the carpet appears to be pink in colour and of a vintage that would not generally be consistent with modern developments. When questioned about the age of the carpet, L.B. solemnly affirmed that the carpet was brand new and was installed just prior to this tenancy starting. He also testified that the carpet was actually beige in colour and that the images gave the appearance of being pink.

While there was no proof submitted supporting that this carpet was brand new and freshly installed, and while I am somewhat suspicious of the legitimacy of L.B.’s testimony given the appearance of the carpet in the pictures, I must accept his solemnly affirmed testimony that the carpet was beige and brand new at the start of the tenancy. As it is clearly evident that the carpet was heavily stained with large, black marks, I am satisfied that the Landlord has established that the carpet needed to be replaced in its entirety. Despite the invoice for the carpet replacement totalling \$2,561.99, as the Landlord did not amend the Application to increase the amount of requested

compensation, I grant the Landlord a monetary award in the amount of **\$2,500.00** to satisfy this claim.

With respect to the drapes, I note that L.B. provided solemnly affirmed testimony that the Landlord would intentionally replace the drapes frequently, every few years, in every rental unit. It is not clear to me why the Landlord would go to this expense as generally, the useful life of drapes would likely exceed more than a few years. While the Landlord is obligated to repair and maintain the rental unit in a manner that is suitable for occupation, there is no requirement to replace drapes that are of still good quality.

Alternately, it is possible that the Landlord could be installing low quality drapes that would necessitate being replaced every few years as these would deteriorate more quickly than average quality drapes. This is raised simply because it was perplexing testimony from L.B., and in conjunction with the doubts raised by the carpet issue above, I am somewhat suspicious of the reliability of his testimony.

Regardless, the consistent and undisputed evidence is that the drapes were new at the start of the tenancy and the documentary evidence clearly demonstrates that these drapes were damaged beyond repair. As such, I am satisfied that the Landlord has established this claim that the drapes required replacement. Despite the Landlord seeking \$600.00 on the monetary order worksheet, as the invoice for the drape replacement totalled \$553.17, I grant the Landlord a monetary award in the amount of **\$553.71** to satisfy this debt.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of total Monetary Award Payable by the Tenants to the Landlord**

Rental arrears	\$1,200.00
Carpet replacement	\$2,500.00
Drape replacement	\$553.17
Filing fee	\$100.00

Security deposit	-\$600.00
<b>TOTAL MONETARY AWARD</b>	<b>\$3,753.17</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,753.17** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: July 28, 2021

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Residential Tenancy Branch