



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on March 10, 2022, seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the security and pet damage deposits.

The hearing was convened by telephone conference call on February 9, 2023, at 1:30 P.M. (Pacific Time), and was attended by the Landlord's agent S.D. (the Agent), who provided affirmed testimony. No one appeared on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, and the documentary evidence before me on behalf of the Landlord, was sent to the Tenant on June 9, 2022, by registered mail at the forwarding address provided by the Tenant on May 17, 2022. A copy of the email wherein the Tenant provided their forwarding address was submitted for my review. The Agent provided me with a copy of the registered mail receipt, which

includes the tracking number. Registered mail tracking information for the above noted registered mail package was also submitted which shows that the registered mail was sent on June 9, 2022, that a notice card was left on June 14, 2022, that a final notice was left on June 19, 2022, and that the registered mail was ultimately unclaimed and returned to sender on July 13, 2022. Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email on June 8, 2022. Based on the above, I find that the Landlord served the Tenant with the NODRP and the documentary evidence before me on behalf of the Landlord for the purpose of section 59(3) of the Act and rule 3.1 Rules of Procedure on June 9, 2022, and that it was deemed received five days later on June 14, 2022, pursuant to section 90(a) of the Act, despite the Tenant's failure to pick it up.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was deemed served with the NODRP by registered mail at their forwarding address for the purpose of the Act on June 14, 2022, I therefore commenced the hearing as scheduled, despite the absence of the Tenant. Although the teleconference remained open for the full duration of the 18-minute hearing, no one attended the hearing on behalf of the Tenant.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the Agent confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retention of the security deposit?

Background and Evidence

The one-year fixed term tenancy agreement in the documentary evidence before me indicates that the fixed term commenced on January 1, 2021, that rent in the amount of \$1,690.00 is due on the first day of each month, and that a security deposit and a pet damage deposit were both required in the amount of \$845.00 each. A parking agreement also submitted indicates that the Tenant was also required to pay \$150.00 each month for parking. During the hearing, the Agent stated that the \$1,690.00 in deposits are still held in trust. An #RTB-7 Notice of Rent Increase was also submitted for my consideration stating that effective January 1, 2023, rent was increased from \$1,690.00 to \$1,715.35, an increase of \$25.35.

The Agent stated that the tenancy ended on May 21, 2022, after the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice). The Agent stated that move-in and move-out condition inspections were completed with the Tenant at the start and end of the tenancy and that copies of the condition inspection reports were emailed to the Tenant after completion. Copies of these reports were also submitted for my review and consideration. The Agent stated that at the time the tenancy ended, the Tenant owed \$2,753.35 in unpaid rent and parking fees, as well as \$100.00 in NSF fees charged in accordance with section 7(b)(i) of the tenancy agreement. The Agent therefore sought recovery of this amount. The Agent also sought recovery of \$200.00 for carpet cleaning in accordance with schedule C of the tenancy agreement as the Tenant had a pet and the carpets were not professionally cleaned at the end of the tenancy as required, as well as \$40.00 in cleaning costs and \$80.00 for

garbage removal as the Tenant did not leave the rental unit reasonably clean at the end of the tenancy as required. The Agent stated that the Tenant provided their forwarding address in writing by e-mail on May 17, 2022, and a copy of this email was provided for my consideration. The Agent requested authorization to withhold the Tenant's deposits as partial payment of the amounts owed, recovery of the filing fee, and a Monetary Order in the name of the Landlord for the balance owed.

Various documents were submitted in support of the Application and testimony, including but not limited to a monetary order worksheet, a copy of the ledger, email communications between the Tenant and Landlord, copies of written notices to the Tenant regarding outstanding amounts owed, condition inspection reports, the tenancy agreement, a parking agreement, an #RTB-7 Notice of Rent Increase, and photographs.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I find that a tenancy to which the Act applies existed between the parties, which ended on May 21, 2022. I also find the following:

- that the Tenant failed to pay \$2,753.35 in rent and parking fees owed under the tenancy agreement and parking agreement;
- that the tenancy agreement permits the Landlord to charge a \$25.00 late/NSF fee each month that rent is late or returned as NSF;
- that the Tenant owes 4 late fees in the amount of \$25.00 each;
- that the Tenant provided their forwarding address in writing by email on May 17, 2022; and
- that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy and to have the carpets properly cleaned at the end of the tenancy in accordance with schedule C of their tenancy agreement and Residential Tenancy Policy Guideline (Policy Guideline) #1.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. As there is no evidence before me that the Tenant had a right under the Act to deduct all or a portion of the rent claimed by the Landlord as owed, I find that they did not.

Sections 7(1)(d) and 7(2) of the regulations state that a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for that fee. As a result of the above and as there is no evidence before me to the contrary, I therefore grant the Landlord the \$2,753.35 in unpaid rent and parking fees, and the \$100.0 for NSF fees.

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline #1 also states that at the end of the tenancy the tenant will generally be held responsible for steam cleaning or shampooing the carpets if the tenancy was over one year in length or at the end of a tenancy of any length of time if they, or another occupant, has had pets which were not caged. Section 7 of the Act states that 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 for damage or loss that results and that a party who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the undisputed documentary evidence and affirmed testimony before me that the Tenant did not have the carpets properly cleaned at the end of the tenancy, despite the fact that they had uncaged pets, and the fact that the tenancy was over one year in length, and that the Tenant failed to leave the rental unit reasonably clean. I also accept that the Landlord therefore incurred \$320.00 in cleaning and garbage removal costs, which I find to be reasonable under the circumstances. As a result, I also grant the Landlord recovery of these amounts. As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Having made these findings, I will now turn to the matter of the security and pet damage deposits. As there is no evidence before me that the Landlord extinguished their rights in relation to the deposits, I therefore find that they did not. I am also satisfied that the Landlord filed the Application seeking retention of the security deposit within the timeline set out under section 38(1) of the Act. Pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to retain the Tenant's security deposit and pet damage deposit in partial repayment of the above noted amounts owed.

As a result of the above, I find that the Landlord is entitled to a Monetary Order pursuant to section 67 of the Act in the amount of \$1,583.35; \$3,273.35 owed, less the \$1,690.00 in deposits, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$1,690.00 in deposits. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,583.35**. The Landlord is provided with this Order 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 Branch under Section 9.1(1) of the Act.

Dated: February 10, 2023

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Residential Tenancy Branch