



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capilano Property Management  
Service and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on June 29, 2022 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on July 17, 2022 for an order returning the security deposit - Section 38.

The Tenant did not attend the hearing to pursue the claim in their application. I therefore dismiss the Tenant’s application. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

The Landlord confirms that they received the Tenant’s application for dispute resolution, notice of hearing and evidence. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on July 15, 2023 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Hearing Package on July 20, 2022.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy under written agreement started on June 1, 2021 and ended on June 22, 2022. Rent of \$1,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit. The Parties mutually conducted both a move-in and move-out condition inspection with reports copied to the Tenant. The Tenant disagreed with the move-out report. The Landlord received the Tenant's forwarding address on June 22, 2022.

On June 1, 2022 the Tenant gave their notice to end the tenancy for June 30, 2022. The Landlord advertised the unit on June 2, 2022 on a couple of web sites for monthly rent of \$1,900.00. A new tenancy was obtained for July 1, 2023. The Landlord claims rent of \$1,700.00 for the Tenant's short notice.

The Tenant failed to leave the unit clean, and the Landlord claims the cleaning costs of \$160.00. the Landlord provides an invoice, photos and a copy of the move-out report. The tenancy agreement requires the Tenant to have the unit professionally cleaned at the end of the tenancy.

The Tenant left the carpets unclean with pet hairs and the Landlord claims the cleaning cost of \$200.00. The Landlord provides an invoice.

The Tenant left the curtains stained and unclean. The tenancy agreement requires professional cleaning of the curtain at the end of the tenancy. The Landlord claims \$150.00 as the cleaning costs and provides a receipt.

The Tenant left the washing machine dirty. The Landlord had their repair person inspect the machine and the report indicated that the machine could be repaired for a cost of \$550.00. The Landlord had a new washing machine on hand for a replacement. The Landlord did not repair the 3 year old machine and removed it to the garbage and claims the removal cost of \$150.00.

The Tenant left walls in the unit damaged by several nail or screw holes. The Landlord claims the repair and paint costs of \$150.00 and provides a receipt. The Landlord provides photos.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the Landlord's evidence of having advertised the unit for a higher amount of rent than is claimed as a loss from the Tenant I find that the Landlord failed to take reasonable steps to mitigate any loss caused by the Tenant's short notice. For this reason and as the Landlord gave no evidence of having lost any rental income caused by the Tenant's late notice I find that the Landlord is not entitled to the claim of \$1,700.00. I also note that the Landlord's application does not include any claim for lost rental income or unpaid rent and the monetary amounts set out in the particulars of application does not include the claim for \$1,700.00. For these reasons I dismiss this claim.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations.

Section 37 of the Act provides 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. As the tenancy agreement requiring professional cleaning is a higher standard than reasonable cleaning I find that this term of the tenancy agreement is not enforceable. Nonetheless, the standard in the Act applies and given the undisputed evidence supported by the photos and move-out inspection I find that the Landlord has substantiated that the Tenant failed to leave the unit reasonably clean including the carpets and curtains. Given the invoices I find that the Landlord has substantiated the reasonable costs claimed of **\$160.00** and **\$350.00**.

Given the Landlord's undisputed evidence supported by the photos I find that the Landlord has substantiated that the Tenant's left at least one wall damaged. Given the invoice I find that the Landlord has substantiated the reasonable costs claimed of **\$150.00**.

Given the Landlord's undisputed evidence supported by the photos I find that the Landlord left the washing machine significantly affected by pet hair. Given the Landlord's evidence of the cost to repair the machine I find that the Landlord's took reasonable steps to mitigate losses in relation to the machine and find that the Landlord is entitled to the removal costs of **\$150.00**.

As the Landlord's claims have met with substantial success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$910.00**. Deducting the security deposit plus interest of **\$853.59** from this entitlement leaves **\$56.41** owed to the Landlord.

### Conclusion

The Tenant's application is dismissed.

**I order** that the Landlord retain the **deposit** and interest of \$853.59 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$56.41**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 22, 2023

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Residential Tenancy Branch