



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD.  
and [tenant name suppressed to protect privacy]  
**DECISION**

## Introduction

The Landlord seeks compensation under sections 67 and 72 the *Residential Tenancy Act* (the “Act”).

The Tenant seeks the return of their security deposit under section 38 of the Act.

## Preliminary Issue: Service of Evidence

The Landlord’s agent testified that the Landlord served its documentary evidence by Canada Post registered mail on the Tenant on or about March 5, 2024. The agent read into evidence the registered mail tracking number, and he testified that the Canada Post tracking website showed that the registered mail was available for pick-up as of March 7, 2024. The Landlord’s agent also read into evidence the address to which the registered mail was sent, and the Tenant confirmed that this was and is the address at which he resides.

Given the above facts, it is my finding that the Tenant, despite not picking up the mail (that Canada Post indicates has been available for pickup since March 7), is deemed to have received the Landlord’s documentary evidence pursuant to section 90 of the Act.

## Issue

1. Is the Landlord entitled to compensation?
2. Is the Tenant entitled to the return of their security deposit?

## Background and Evidence

The tenancy in this dispute began on July 1, 2021, and ended on October 26, 2023. The tenancy was ended by way of a decision issued by the Residential Tenancy Branch on September 8, 2023. Issued with the decision was an order of possession and a monetary order (see previous file no. as referenced on the cover page of this Decision).

The Landlord seeks \$9,555.14 in compensation for the following: (1) \$4,686.89 for bailiff costs, (2) \$168.00 for carpet cleaning, (3) \$1,184.39 for “handyman hours and materials,” (4) \$336.00 for cleaning, (5) \$189.99 for junk disposal, (6) \$278.25 for cockroach pest control, (7) \$2,612.61 for new carpets, and (8) \$100.00 for the cost of the Residential Tenancy Branch application fee. The Landlord seeks to retain the Tenant’s \$725.00 security deposit against any amount awarded.

A Monetary Order Worksheet was submitted into the Landlord’s evidence, along with supporting invoices, receipts, photographs, and a completed condition inspection report.

The Landlord gave evidence that they served the order of possession upon the Tenant on or about October 20, 2023. The Landlord had warned the Tenant that they would be pursuing possession of the rental unit. The Tenant failed or refused to vacate. The Landlord then proceeded to enforce the order of possession by engaging a bailiff, which executed a writ of possession on October 26, 2023.

The Landlord gave evidence, both in the form of affirmed testimony and documentary evidence (which included photographs and a condition inspection report), that the Tenant left the rental unit in a state and condition requiring cleaning, repairing, and (after unsuccessfully attempting to clean it) replacement of the carpet. The Landlord testified that the carpet had been purchased new on August 31, 2019, making the carpet just over four years old at the time the tenancy ended.

The Tenant testified about the tenancy, including matters that pertained to the events leading to the previous decision and orders. He also testified that he had some sort of agreement with someone with the Landlord in which he was allowed to move out at the end of October 2023. However, this did not occur, and bailiffs removed his property. He argued that it was the Landlord’s decision to pay for bailiffs despite his previously agreeing to vacate. The Tenant also addressed in his testimony and submissions various other aspects of the Landlord’s claims.

## **Analysis**

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. A party claiming compensation must do whatever is reasonable to minimize their loss.

Based on the evidence before me, it is my finding that the Landlord has proven that the Tenant breached section 37 of the Act by not leaving the rental unit reasonably clean and undamaged, and that any such damage was not a result of reasonable wear and tear. The photographs and, most importantly, the condition inspection report establish and support the Landlord's argument that section 37 of the Act was breached. Further, the Landlord has proven that but for the Tenant's breach of the Act that the Landlord would not have suffered the loss and damage proven.

The Tenant had more than a month between receiving the previous decision and order of possession and eventually being removed by the bailiffs to clean and repair the rental unit, and to remove all of his belongings and property.

The one claim that must be adjusted is for the cost of the carpet replacement. It is noted that the carpet was just over four years old at the time the tenancy was ended. Applying useful life depreciation as set out in *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements* (ver. March 2012, p. 5), carpets have a useful life of 10 years. Therefore, I apply a liberal depreciation of 4.5 years (or 45 percent) to the \$2,612.61 claim and reduce the amount to \$1,436.94.

The other claim that I must address is the claim for cockroach pest control. While there is an invoice for the cost of the pest control (and the invoice notes "20+ live [cockroaches] observed"), the Tenant testified that the building itself had cockroach issues. Considering this testimony, and in the absence of any supporting evidence from the pest control company firmly proving that it was the Tenant who caused or exacerbated the cockroach situation, I decline to award the Landlord this claim.

Regarding the cost for the bailiff, based on the evidence before me, it is my finding that the Landlord has proven that the Tenant failed to comply with the order of possession and decision of September 8, 2023 (after the Tenant's application for review consideration was dismissed on September 18, 2023). The Tenant had well over a month to vacate the rental unit, but ultimately chose not to do so.

In summary, but for the Tenant's refusal to comply with an order of the Residential Tenancy Branch, the Landlord would not have been required to execute the order of possession and incur bailiff costs. Despite the Tenant's claim that some sort of move-out arrangement had been made, I see no supporting evidence to prove this claim.

Pursuant to section 67 of the Act it is my finding that the Landlord has, on a balance of probabilities, proven its claim for compensation in the amount of \$8,102.21.

Pursuant to subsection 38(4)(b) of the Act the Landlord is ordered and authorized to retain the entirety of the \$725.00 of the security deposit in partial satisfaction of the amount awarded. Consequently, the Tenant's application for the return of the security deposit is dismissed without leave to reapply.

The Tenant is ordered to pay the balance of the amount owing (\$7,377.21). A monetary order for this amount is issued with this decision to the Landlord, who must forthwith serve a copy of the monetary order upon the Tenant. The monetary order may be filed and enforced in the Provincial Court of British Columbia.

### **Conclusion**

The Landlord's application is granted, and the Landlord is awarded \$8,102.21. The Landlord is authorized to retain the Tenant's \$725.00 security deposit and the Tenant is ordered to pay \$7,377.21 to the Landlord.

The Tenant's application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: March 27, 2024

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Residential Tenancy Branch